

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION

-----  
THE STATE OF TEXAS, )  
Plaintiff, )  
vs. ) CIVIL ACTION  
THE AMERICAN TOBACCO, ) NO. 5:96CV91  
COMPANY et al. )  
Defendants. )

COPY

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VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION

OF

RONALD W. CARTER, PhD

-----  
9:05 a.m.

September 27, 1997

4550 Third Ave SE

Lacey, Washington

Margaret Walkky, CCR, RMR, CRR

Court Reporter, WALKKMV498MQ

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## A P P E A R A N C E S

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FOR DEFENDANTS:      BRADLEY E. LERMAN  
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ALSO PRESENT:        Doug Patterson, ProVideo  
Jane Ward

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1 THE VIDEOGRAPHER: This is the videotaped  
2 deposition of Dr. Ronald W. Carter. My name is Douglas  
3 Patterson. I am the videographer from ProVideo  
4 Productions located at 80 South Washington Street,  
5 Suite 200, in Seattle, Washington, 98104. The date is  
6 September 27th, 1997. The time is 9:05 a.m. We are at  
7 Cubic Applications at 4550 Third Avenue Southeast,  
8 Lacey, Washington. This deposition is being recorded  
9 in the matter of the State of Texas versus American  
10 Tobacco Company et al, case number 5:96CV91, in the  
11 United States District Court for the Eastern District  
12 of Texas, Texarkana Division, and was noticed by  
13 Mr. Allen Harrell for the tobacco industry. Counsel at  
14 this time may identify themselves for the record and  
15 the witness may be sworn in.

16 MR. HOHN: My name is Ed Hohn. I'm with the  
17 Nix law firm for the State of Texas.

18 MR. LERMAN: My name is Brad Lerman. I'm  
19 with the law firm of Kirkland & Ellis representing the  
20 defendants in this case. Along with me is Emily Bab,  
21 also from Kirkland & Ellis, representing the  
22 defendants.  
23  
24  
25



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1 Whereupon,  
2 RONALD W. CARTER,  
3 having been first duly sworn, was called as a witness  
4 herein and was examined and testified as follows:  
5

6 E X A M I N A T I O N

7 BY MR. LERMAN:

8 Q. Dr. Carter, before we start the deposition, I  
9 just want to make sure that I am clear about who is in  
10 the room with us today for this deposition. My name is  
11 Brad Lerman. I work at Kirkland & Ellis, which is a  
12 law firm. We represent Brown & Williamson. We're also  
13 here taking this deposition on behalf of the defendants  
14 in this case. Emily Bab from Kirkland & Ellis is also  
15 with me.

16 Mr. Hohn is, I take it, representing the  
17 State of Texas; is that correct?

18 A. That's my understanding.

19 MR. HOHN: Correct.

20 Q. He is not representing you in the sense of  
21 being your personal attorney?

22 MR. HOHN: That's correct.

23 A. That's correct.

24 MR. LERMAN: And there is a Jane Ward in the  
25 room. Mr. Hohn, can you explain who that is?

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1 MR. HOHN: Jane Ward is an assistant with  
2 Cubic Applications and her role here today is purely  
3 support in retrieving some of the documents to try to  
4 save you time in your examination if you should ask for  
5 any of the documents that have been previously  
6 disclosed to the defendant tobacco companies.

7 MR. LERMAN: Okay. Is Ms. Ward an employee  
8 of Cubic Applications?

9 MR. HOHN: She is.

10 MR. LERMAN: Is she subject to the protective  
11 orders in this case?

12 MR. HOHN: I'll represent to you that she is  
13 and that she will abide by those conditions.

14 MR. LERMAN: Ms. Ward, can I have your  
15 representation that you are subject to the applicable  
16 protective orders in this case?

17 MS. WARD: Yes.

18 MR. LERMAN: For the record, in case it  
19 wasn't picked up on audio, Ms. Ward answered yes.

20 Q. Dr. Carter, do you understand that you are  
21 under oath during this deposition?

22 A. I do.

23 Q. All right. So it's important that your  
24 testimony be as accurate and as truthful as possible;  
25 do you understand that?

1 A. I do.

2 Q. If at any time I ask you a question that you  
3 do not understand or I use a phrase that you do not  
4 understand or I'm in any way unclear, please ask me to  
5 restate the question and I will do so. Do you  
6 understand that?

7 A. I do.

8 Q. Because I want to make sure that you and I  
9 are connecting in terms of understanding one another so  
10 that your answers are the best answers that you can  
11 give today; is that fair?

12 A. Fair enough.

13 Q. All right. You understand that it's  
14 important that you tell the truth today because you're  
15 under oath in the same way that you would be put under  
16 oath if you testified at trial in Texarkana in this  
17 case; do you understand that?

18 A. I understand that.

19 Q. So that the statements that you make today  
20 and the testimony you give today has to be truthful in  
21 the same way that the testimony that you would give at  
22 trial would be truthful; do you understand that?

23 A. Absolutely.

24 Q. And it's subject to the same, all of the same  
25 requirements and possible penalties if for any reason

1 there should be knowing misstatements; do you  
2 understand that?

3 A. Clearly.

4 Q. Okay. Dr. Carter, I just want to get some  
5 information from you early about your biographical  
6 history.

7 A. Uh-huh.

8 Q. How old are you, sir?

9 A. I'm 50 years old.

10 Q. All right. Where did you grow up?

11 A. I was -- I grew up, my early life, I was a  
12 military dependent, so my father was assigned to the  
13 Army and I grew up in part in the Philippines, Japan,  
14 various places in the United States. My parents were  
15 divorced when I was in the third grade and I lived with  
16 my mother until I graduated from high school in  
17 Jacksonville, Florida.

18 Q. Okay. So for the first eight years of your  
19 life, did you live in the United States or outside the  
20 United States?

21 A. Both. I lived in Japan for two or three  
22 years. We were in Japan when the Korea war broke out  
23 so it was in that time frame that we left. Prior to  
24 that, I was in the Philippines with my parents as a  
25 young child..

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1 Q. From the third grade forward, have you lived  
2 in the United States?

3 A. To this point?

4 Q. Yes.

5 A. No, I've -- when I joined the service at 17,  
6 I began to travel worldwide wherever the government  
7 assigned me or wherever the Army assigned me and lived,  
8 and spent five years living in Korea, I spent two years  
9 living in Hawaii, I spent about five or six years  
10 living in Europe and then I've traveled extensively  
11 worldwide. I spent two years in Vietnam also, and I  
12 spent off and on about six months in Bosnia,  
13 Yugoslavia. I also spent eight months in Naples,  
14 Italy, and in Bosnia intermittently as I traveled in my  
15 job from Naples to Yugoslavia, former Yugoslavia.

16 Q. Where did you go to high school?

17 A. I went to Ribault High School, in  
18 Jacksonville, Florida.

19 Q. And when you graduated high school, what did  
20 you do?

21 A. I traveled up to Maryland for about two  
22 months, stayed with my father, where I had a short job  
23 with Montgomery Ward as a -- working in their delivery  
24 department for about two months, and then I joined the  
25 Army in October of 1964.

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1 Q. How old were you when you joined the Army?

2 A. 17.

3 Q. Did you graduate high school?

4 A. Yes.

5 Q. How long were you in the Army?

6 A. Approximately 32 years.

7 Q. We'll talk about your Army career in a  
8 second, but when did you leave the Army?

9 A. September of 1996. Exactly a year ago.

10 Q. What was your rank when you left?

11 A. Colonel.

12 Q. What did you do when you left the Army?

13 A. I was employed immediately by Cubic  
14 Applications.

15 Q. Have you held any job other than an  
16 Army-related job during that 32-year period from 1964  
17 to 1996? Were you ever employed in a civilian capacity  
18 during that time?

19 A. No, I was not.

20 Q. So Cubic Applications is your first civilian  
21 job since you worked at Montgomery Ward?

22 A. Full-time job, yes. Obviously in the  
23 service, the service today is heavily laden with  
24 working with contract support personnel, so I've worked  
25 with, not for, but I've had contractor personnel

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1 working for me for many years of a variety of types,  
2 mainly defense contract personnel and organizations.

3 Q. Starting in 1964 when you joined the Army,  
4 where were you stationed, what did you do?

5 A. I joined the Army in Fort Dix, New Jersey. I  
6 went through basic training at Fort Dix. From there, I  
7 was assigned to Fort Devan, Massachusetts for advanced  
8 individual training, where I was trained as a Morse  
9 code intercept operator.

10 Q. Okay. Following your training as a Morse  
11 code intercept operator, what did you do?

12 A. I stayed there after training because I had  
13 been selected for officer candidate school and stayed  
14 on what we call a casual status there as an acting  
15 sergeant managing soldiers, and then I left and went to  
16 Fort Devan -- excuse me, Fort Benning, Georgia, and  
17 attended officer candidate school in September of  
18 1965.

19 Q. How long were you there?

20 A. Approximately seven months.

21 Q. What happened?

22 A. Then I went to airborne training at Fort  
23 Benning and was immediately assigned to Vietnam.

24 Q. In what capacity were you assigned to  
25 Vietnam?

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1           A.    I was a platoon leader in an intelligence  
2 company supporting the first cavalry division.

3           Q.    What is an intelligence company?

4           A.    It's a company that provides information on  
5 hostile forces, in this case the North Vietnamese and  
6 South Vietnamese irregulars that were opposing us in  
7 Vietnam.

8           Q.    What does the platoon leader of an  
9 intelligence company do?

10          A.    He provides management prioritization, troop  
11 leadership, morale support, guidance to soldiers who  
12 are engaged in intelligence collection operations to  
13 try to find out facts about what the in this case  
14 hostile forces were trying to do to the U.S. forces in  
15 the first cavalry division.

16          Q.    Okay.

17          A.    So intelligence collection in that  
18 standpoint, and interpretation and analysis of course  
19 of that information.

20          Q.    Okay. How long were you in Vietnam?

21          A.    One year.

22          Q.    In that capacity?

23          A.    Yes.

24          Q.    When did you leave Vietnam?

25          A.    Approximately July of 1967.

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1 Q. Then where were you assigned?

2 A. I was assigned to Hawaii where I was again a  
3 platoon leader in a security platoon that was providing  
4 communications security training and support to the  
5 U.S. Army Pacific command.

6 Q. All right. What specifically did that unit  
7 do?

8 A. The unit was engaged in looking at  
9 vulnerabilities of U.S. forces, vulnerabilities in  
10 their handling of documents, in their use of  
11 communications, electronic communications, trying to  
12 look for patterns of vulnerabilities so that we could  
13 employ security measures or at least recommend security  
14 measures to shore them up, an area in which we in the  
15 Army would call operational security.

16 Q. And the operational security measures are  
17 undertaken in defense of hostile action; is that right?

18 A. Unauthorized intrusion.

19 Q. By whom?

20 A. It could be by enemies of the state, it could  
21 be by computer hackers, it could be by anyone who had  
22 any casual need to want to break in and use or exploit  
23 information that we were generating.

24 Q. How long were you in that assignment?

25 A. Two years.

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1 Q. Until when?

2 A. Approximately July of '69.

3 Q. Then what did you do?

4 A. I was reassigned back to Vietnam as a company  
5 commander with the 21st -- 25th infantry division.

6 Q. What were your responsibilities?

7 A. I commanded approximately a 300-person  
8 company that was engaged in intelligence collection  
9 with a heavy reliance on signals intelligence  
10 collection against the same enemy that we know was over  
11 there, North Vietnamese and irregulars in the south.

12 Q. What is signal collection?

13 A. It's exploiting foreign signals. It could be  
14 data signals, it could be communications signals, it  
15 could be whatever the technology of the day allows you  
16 to emit signals out over the airways. I'm speaking to  
17 you in this area very, very generically. Obviously  
18 this is a 30-year-old experience that's been publicized  
19 that we were engaged in signal collection operations  
20 there, so I'm trying to state generically some of the  
21 practices that we employed.

22 Q. And I want to talk to you a little bit about  
23 some of your concerns about what you can say and what  
24 you can't say.

25 A. Sure.

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1 Q. We'll do that in a minute, but I just wanted  
2 go through --

3 A. Sure.

4 Q. -- and get the lay of the land, so to speak.

5 What you were doing in terms of your  
6 intelligence gathering in the second assignment in  
7 Vietnam again is in the context of an active war; is  
8 that right?

9 A. An active war, yes.

10 Q. How long were you there on the second  
11 assignment?

12 A. One year.

13 Q. When did you leave?

14 A. I left in 1970, the summer of 1970,  
15 approximately June.

16 Q. What did you do next?

17 A. I was assigned to Fort Holabird, Maryland,  
18 where I attended the military intelligence officer  
19 advanced course.

20 Q. What kind of course is that?

21 A. That was a course in training in the art of  
22 intelligence collection, processing, analysis, fusion,  
23 presentation, dissemination. So it was a trade craft  
24 advanced course that lasted approximately nine months.

25 Q. What is the focus of this course in terms of

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1 its application, applied in what setting?

2 A. Applied in the military setting, so that the  
3 trade craft of intelligence collection, processing and  
4 reporting can be done efficiently and effectively.

5 Q. What kind of goals are achieved when that  
6 kind of efficiency and effectiveness are implemented?  
7 What's the benefit in a military context?

8 A. If I understand your question, you applied  
9 your trade more effectively in the broadest sense.  
10 There's a great deal to learn in the business of  
11 intelligence operations, both in geography and scope  
12 and technology, and of course new technology is always  
13 coming on the scene. So this was an advanced course in  
14 methods and techniques.

15 Q. Just in layman's terms, is this methods and  
16 techniques in espionage?

17 A. It could be, against a foreign government.

18 Q. Counterintelligence?

19 A. Could be.

20 Q. Is this kind of cloak and dagger stuff?

21 A. Well, the generic subject, the generic  
22 techniques are open and unclassified literature for  
23 anybody to read. Specific application of those  
24 techniques is normally considered case-by-case  
25 sensitive.

1 Q. But in this course, the course that we're  
2 talking about that you took, the advanced course, the  
3 goal here is to improve skills in intelligence,  
4 counterintelligence operations that may occur on  
5 foreign soil; is that right?

6 A. That's true.

7 Q. All of this in the context of the defense of  
8 the United States interests; is that right?

9 A. That's true.

10 Q. On behalf of the military, correct?

11 A. That's true.

12 Q. To protect troops or other operations that  
13 may be ongoing; is that right?

14 A. That's a fair statement.

15 Q. And also to help effectuate operations that  
16 are ongoing; is that right?

17 A. Yes.

18 Q. Following this course, what did you do?

19 A. I was sent to Syracuse University for a year  
20 and a half to get an MBA in comptrollership or  
21 finance. The degree was actually in comptrollership,  
22 and I concurrently graduated from the Army Comptroller  
23 School, which is co-located with the School of  
24 Management at Syracuse.

25 Q. How long were you at Syracuse?

1           A.    A little over a year. It was a year and one  
2 summer semester.

3           Q.    What kind of courses did you take?

4           A.    The standard MBA courses you might expect:  
5 organizational behavior, advanced quantitative methods,  
6 some statistical courses, economics, accounting, areas  
7 of focus that you would expect in a degree that was  
8 largely focused on finance and financial accounting.

9           Q.    What did you do next?

10          A.    I was assigned as the comptroller of an Army  
11 installation in northern Virginia called Vint Hill Farm  
12 Station. It's in Warrenton, Virginia. So I was the  
13 senior financial officer and management analyst for the  
14 installation, and the installation supported an  
15 intelligence training base.

16          Q.    What were your responsibilities as the  
17 comptroller for that installation?

18          A.    As I briefly said, financial planning,  
19 financial health, execution of budgets as they related  
20 to the command that I was a part of, and that was an  
21 intelligence and security command.

22          Q.    Were there any operational aspect, by that I  
23 mean any substantive intelligence training  
24 responsibilities that you had during that time?

25          A.    Myself personally?

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1 Q. Yes, yes.

2 A. Only the experience of having existed on that  
3 site, watching the training and watching the operations  
4 going on.

5 Q. Did you participate in the training?

6 A. Indirectly in that I monitored some of the  
7 training. I was exposed to, had a professional  
8 interest in it. It was not only training, but there  
9 were actual operations.

10 Q. There were actual operations being carried  
11 out at that site?

12 A. I'm getting close to an area where I'm  
13 feeling very uncomfortable about probing into this  
14 area.

15 Q. Let's see if we can come back to it. Let's  
16 continue just getting some dates and move forward.

17 A. Uh-huh.

18 Q. How long were you in that position as  
19 comptroller?

20 A. Approximately three years.

21 Q. Till when?

22 A. Till approximately 1975.

23 Q. Then what?

24 A. I was assigned to Fort Leavenworth, Kansas as  
25 an intelligence, deception and operational security

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1 officer, and there were a number of other duties that I  
2 had.

3 Q. I'm sorry, I didn't -- intelligence?

4 A. Deception.

5 Q. Deception?

6 A. Battlefield deception, operational security,  
7 and then I over the course of the time that I was  
8 there, I worked a number of other projects,  
9 organization of intelligence and security forces  
10 worldwide. I also attended the year long Command and  
11 General Staff College, which is also at Fort  
12 Leavenworth.

13 Q. You were three for three years?

14 A. Yes.

15 Q. And then what did you do?

16 A. I was assigned the Defense Intelligence  
17 Agency.

18 Q. Where?

19 A. In Washington, D.C.

20 Q. In what capacity?

21 A. As a senior analyst.

22 Q. What does a senior analyst do?

23 A. Senior analyst does two things: Number one,  
24 he has his own domain of analysis, production of major  
25 studies and assessments and evaluations. In my



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1 particular area, I was targeted principally against the  
2 Soviet Union and the Eastern Block of countries. This  
3 is obviously while the cold war was going on, and I  
4 also managed other analysts that operated in my  
5 directorate, division.

6 Q. How many analysts did you supervise?

7 A. Analysts came and went, so the total number  
8 over the couple of years I was there was probably eight  
9 or nine. At any given time, we probably had five or  
10 six in my particular office.

11 Q. What kind of things were you analyzing?

12 A. Soviet capacity to perform intelligence  
13 collection against the United States.

14 Q. Is that a capacity to spy, in civilian terms?

15 A. I hate to use any kind of broad category.  
16 Capacity of the government and the armed forces of the  
17 Soviet Union to conduct intelligence operations against  
18 the U.S. and its interests.

19 Q. What else?

20 A. That's the broad category of what I looked  
21 at. I conducted various studies, major studies, all of  
22 them in the broad category of Soviet capacity, Soviet,  
23 Warsaw Pact capacity to wage warfare on the United  
24 States. The main theme of the Defense Intelligence  
25 Agency is an intelligence production organization and

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1 it produces major studies, analyses and estimates on  
2 foreign, mainly foreign armies, military services'  
3 ability to wage war against the United States, where  
4 they're effective, where they're strong, where they're  
5 weak. So the operative word here is analyst, as I  
6 said.

7 Q. Did your work as a senior analyst for the  
8 Defense Intelligence Agency include an analysis of the  
9 Soviet Union or Eastern Block countries' abilities to  
10 conduct intelligence operations on U.S. soil?

11 A. It certainly would have gotten into  
12 discussions of their desire to do so. I can't recall  
13 if -- I was not in the business of chasing agents or  
14 the operational end of it. I was basically talking  
15 about their doctrine and organization and equipment and  
16 training which would give them the capacity to conduct  
17 a wide range of intelligence operations.

18 Q. Okay. What did you do after that assignment?

19 A. I was assigned to the National Security  
20 Agency as an executive fellow to the director of  
21 National Security Agency.

22 Q. What were your responsibilities there?

23 A. It was a learning position. It was a  
24 developmental fellowship-like position where the  
25 director allowed more junior officers to be exposed to

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1 National -- in this case National Security Agency  
2 policies, techniques, priorities.

3 Q. Can you be more specific about what that  
4 means?

5 A. Obviously I'm not going to get into specifics  
6 with regard to the operations of NSA, but I can tell  
7 you that the exposure was to give me a corporate view  
8 as someone who they thought had a future in the Army  
9 where I would rise to certain positions where I could  
10 use that corporate view as I performed in command and  
11 staff positions later in my time.

12 Q. What does that mean, corporate view?

13 A. Front office view.

14 Q. Front office view meaning what?

15 A. Meaning I got to sit in meetings with the  
16 director of the National Security Agency, watch him  
17 operate, watch him make decisions, watch him prioritize  
18 efforts.

19 Q. In other words, begin to understand the  
20 effort from an upper level management focus?

21 A. That would be a fair statement.

22 Q. Okay. How long were you an executive fellow?

23 A. One year.

24 Q. And until what date, approximately?

25 A. Approximately 1980.

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1 Q. And then?

2 A. Then I was a battalion commander at Fort  
3 Meade providing training support to Army forces  
4 worldwide.

5 Q. What kind of training and support?

6 A. Because we're not engaged in hostilities on a  
7 day-to-day basis, I was providing training-like  
8 vignettes and lessons to soldiers who were spending  
9 normal time in garrison in their normal housing sites,  
10 so that they could understand what they would be  
11 required to do if they had to deploy into a situation  
12 where they had to use those techniques.

13 Q. Okay. Training-like vignettes in what  
14 subject?

15 A. Intelligence operations and security  
16 operations and the major emphasis here was on  
17 communications.

18 Q. And these are techniques that they would have  
19 to deploy in the event of war or hostilities, correct?

20 A. Or whatever scenario that they would deploy  
21 in. It could be peacekeeping, it could be humanitarian  
22 relief, it could be --

23 Q. Okay, but wherever troops would be deployed  
24 for whatever purposes, these were the kind of vignettes  
25 that you were developing; is that right?

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1           A.    Generally, deploy is a relative term because  
2           sometimes you don't have to leave the continental  
3           United States.  Some data is sent back for analysis,  
4           the target always being a foreign target, but the  
5           analysis could be brought back and be performed in the  
6           United States.

7           Q.    So when you use the term deploy, what you  
8           mean is involved in an ongoing live operation; is that  
9           a fair characterization?

10          A.    Either ongoing live operation or a training  
11          exercise where they're in local deployment areas or in  
12          local scenarios.  It could be classroom training that I  
13          was supporting.  The ultimate aim is to prepare them to  
14          use their trade craft if called on to do so.

15          Q.    In an actual real operation?

16          A.    Yes.

17          Q.    Okay.  How long were you battalion commander  
18          at Fort Meade?

19          A.    Approximately 10 months.

20          Q.    And then?

21          A.    I was deployed to Korea as the senior  
22          intelligence officer for the second infantry division  
23          which is up on the DMZ in Korea.

24          Q.    What were your responsibilities as senior  
25          intelligence officer?

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1           A.    I was the senior manager for intelligence and  
2           security operations and the senior analyst for the  
3           division, which was about a -- I'm not sure how much  
4           you know about Army organization, it's approximately a  
5           20,000-soldier tactical command that's deployed on the  
6           demilitarized zone on a daily basis.

7           Q.    And the demilitarized zone between the North  
8           Koreans and the South Koreans is an area where there  
9           are frequent skirmishes or disquieting events; is that  
10          fair?

11          A.    There's tension, if not open hostilities.  
12          There's open hostilities in the sense of random  
13          firings, mine, it's a mine-laced area, as you  
14          undoubtedly know. It's probably the most fortified,  
15          militarily fortified area in the world, one of the most  
16          militarily fortified, and there were tensions like we  
17          all read in the press there all the time. So readiness  
18          was a key requirement for the position.

19          Q.    So if it wasn't a live conflict, it was  
20          something that certainly was tense or heated; is that  
21          fair?

22          A.    That's a fair statement.

23          Q.    How long were you up there?

24          A.    One year.

25          Q.    Until when?

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1 A. Army -- let's see, I left in 1983.

2 Q. And Dr. Carter, where did you go then?

3 A. I was assigned as the executive assistant to  
4 the joint intelligence officer for all of Korea.

5 Q. What were your responsibilities as the  
6 executive assistant?

7 A. I was in charge of, first of all, running the  
8 office, prioritizing his schedule. He was an Air Force  
9 officer, so I provided Army perspective to intelligence  
10 security operations to include operational security,  
11 deception, studies and analyses that he was conducting.

12 Q. And his focus was Korea; is that right?

13 A. Correct, and the adjoining waters and air.

14 Q. How long were you in that position?

15 A. Approximately a year.

16 Q. Until when?

17 A. Until 1984.

18 Q. And then?

19 A. Then I was assigned as a battalion commander  
20 in Korea of an intelligence unit that operated south of  
21 Seoul.

22 Q. How long were you in that position?

23 A. Two years.

24 Q. Until 1986?

25 A. Correct.

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1 Q. And then what did you do?

2 A. I went to Harvard as a national security  
3 fellow on a fellowship provided by Harvard and the  
4 Defense Department.

5 Q. What kind of program is that?

6 A. It's a program to expose -- it's twofold: to  
7 expose folks like myself to the broader political,  
8 military realities of defense; and to expose other  
9 students and programs to the defense point of view. I  
10 wasn't there to -- I was there principally through both  
11 professional and social contact to broaden my  
12 understanding of what environment the Defense  
13 Department lives in. Similarly, through courses I took  
14 at the Kennedy School, learned more broader  
15 understanding of national security policy on a  
16 political/military point of view.

17 Q. Did you instruct courses as a fellow?

18 A. I was not employed as -- I was a student  
19 fellow in classrooms in which I was often called upon  
20 to speak to subjects from the viewpoint of a soldier.

21 Q. Okay. How long did the fellowship last?

22 A. Approximately a year.

23 Q. Part of the reason for having a fellowship  
24 program like this is to broaden the experience of  
25 people who spend their time in the military without



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1     having exposure to the domestic political environment;  
2     is that fair?

3           A.     That's a fair statement, to give context, I  
4     would say to give context, to what our missions and  
5     roles are to the Army. If you believe that national  
6     defense is the first public service, to also educate  
7     them that how we think, who we are.

8           Q.     Kind of the coming together of two different  
9     cultures?

10          A.     It could be, or to try to make sure two  
11     cultures don't get too broadly -- or don't get too  
12     cannulized in their own areas. Obviously when you live  
13     in a military environment, you start thinking in a  
14     military context and this was an effort to try to break  
15     out of that mold.

16          Q.     After the Harvard fellowship, where did you  
17     wind up?

18          A.     I was assigned to Stuttgart, Germany.

19          Q.     This is in 1987?

20          A.     Correct.

21          Q.     In what capacity?

22          A.     I was the deputy senior intelligence officer  
23     for U.S. Seventh Corps in Stuttgart, Germany, which is  
24     one of the corps, one of the two corps deployed to  
25     Germany at that time in a cold war framework, two of

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1 the Army's forward deployed corps.

2 Q. How long were you the deputy senior  
3 intelligence officer there?

4 A. Two years.

5 Q. Now we're in 1989?

6 A. 1989 I was selected to command an  
7 intelligence brigade, which is about a 2,300-soldier  
8 airman-sailor-marine, Canadian-U.S.-British  
9 organization in Augsburg, Germany.

10 Q. This involved nonU.S. troops?

11 A. This involved participation by our NATO  
12 allies to include Germany, yes.

13 Q. And what was the nature of the command?

14 A. It was a command -- the organization was a  
15 military intelligence organization by title, and I  
16 would prefer not to get into the specifics of conduct  
17 of business in that job.

18 Q. How long did you remain in that role?

19 A. Two years.

20 Q. Until 1991?

21 A. Correct.

22 Q. What happened then?

23 A. I was assigned as the senior intelligence  
24 officer to the U.S. First Corps at Fort Lewis,  
25 Washington.

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1 Q. As the senior intelligence officer, what were  
2 your responsibilities there?

3 A. I was in charge of intelligence preparedness  
4 of the corps. This particular corps was focused in the  
5 Pacific Rim region, a lot of emphasis at that time on  
6 Korea, but also other areas where we might employ  
7 forces in the Pacific.

8 Q. Okay. How long at Fort Lewis?

9 A. Two years, approximately.

10 Q. Then what was your assignment?

11 A. I was assigned as the senior joint  
12 intelligence officer for NATO humanitarian deployment  
13 to Bosnia.

14 Q. Is this when you were assigned to Naples?

15 A. The rear headquarters was in Naples. The  
16 forward headquarters was in Zagerb, Croatia, with  
17 detachments at various places throughout Bosnia.

18 Q. How long were you there?

19 A. Approximately six months.

20 Q. Then what?

21 A. I was assigned as the deputy chief of staff  
22 of operations for the command at Fort Belvoir, Virginia  
23 known as the intelligence and security command.

24 Q. And what is that?

25 A. It's an Army major command engaged in

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1 worldwide intelligence readiness operations,  
2 post-intelligence security and information operations.

3 Q. What were your responsibilities there?

4 A. I was the senior operations officer.

5 Q. What does that mean?

6 A. Much like in business, civil business, I was  
7 the senior planner, senior manager at the operational  
8 level, senior integrator, prioritizer, resource manager  
9 for our conduct of our business.

10 Q. How long were you in that position?

11 A. Just under a year.

12 Q. Until?

13 A. Let's see, I got there in '91. Approximately  
14 '92, and then I became the deputy commander of the  
15 same organization. Obviously I'm trying to recall 32  
16 years worth of history here without notes, so give  
17 me --

18 Q. I think you're doing a very fine job.

19 A. I mean --

20 Q. Maybe my notes are inaccurate, let's see if  
21 I've got this. I've got you assigned to Fort Lewis in  
22 1991?

23 A. '89, '91, yes, I was assigned there in '91.

24 Q. Then I've got you --

25 A. For two years.

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1 Q. -- for two years starting in 1993 to the NATO  
2 humanitarian deployment?

3 A. Right, for less than a year. So that was  
4 about -- don't hold me to months or whole years here.  
5 These are approximates.

6 Q. Okay.

7 A. But approximately 1993, I was assigned to  
8 INSCOM as the DCSOPS and then later as the deputy  
9 commander.

10 Q. When did you leave that position?

11 A. Approximately 1995, January of '95,  
12 approximately.

13 Q. What was your next assignment?

14 A. I was assigned as the senior U.S. Army  
15 intelligence officer for Europe.

16 Q. Where was that assignment?

17 A. Heidelberg, Germany.

18 Q. How long were you in that position?

19 A. About 10, 10 months.

20 Q. And then?

21 A. Then I retired. So now we're to  
22 approximately September of last year.

23 Q. September 19 --

24 A. '96.

25 Q. You retired from the Army in September 1996,

1 and joined?

2 A. Cubic.

3 Q. On what day?

4 A. I don't know the date. It was in September.  
5 I think it was the 30th, but I think it was near the  
6 end of the month.

7 Q. Approximately a year ago?

8 A. Approximately a year ago.

9 Q. Okay. When you joined Cubic, what was your  
10 title when you joined the company?

11 A. I was employed as a senior analyst and  
12 program manager for intelligence information operations  
13 and special operations support.

14 Q. Are these services that you are providing for  
15 Anheuser Busch Brewing Company?

16 A. No, I was providing these mainly to the  
17 Defense Department.

18 Q. Okay. You say mainly to the Defense  
19 Department. Who else?

20 A. State of Texas, the drug enforcement, various  
21 entities.

22 Q. Drug enforcement, you mean the DEA?

23 A. Well, there's a whole series of drug  
24 initiatives, drug interdiction initiatives. This was  
25 not an initiative I ended up working on, but I worked

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1 on a proposal to provide information support and  
2 operation center support to the Northwest region for  
3 drug interdiction. It turned out that I was not hired,  
4 but -- we were not employed but I worked on the  
5 proposal for it.

6 Q. To whom was the proposal made?

7 A. It was made to, I think my main contact was  
8 Customs here in the Seattle area.

9 Q. United States Customs Service?

10 A. Right, and they decided not to employ us.  
11 Customs was representing a loose confederation of the  
12 various drug enforcement folks here in the region.

13 Q. So that's a governmental, that would have  
14 been a governmental assignment?

15 A. That would have been an assignment with  
16 Cubic, but civil support or commercial firm support to  
17 that enterprise.

18 Q. Civil support to a government operation; is  
19 that right?

20 A. Or whoever else is employed in drug  
21 interdiction. I don't know all the various commands  
22 and centers that would employ, certainly state, local,  
23 state and federal, and whoever else.

24 Q. Okay.

25 A. Again, I didn't get involved that

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1 extensively.

2 Q. So since joining Cubic, you have done work  
3 mainly for the Department of Defense, correct?

4 A. Correct.

5 Q. You've done an initiative or a proposal for a  
6 drug enforcement program that you believe was at least  
7 being managed in part by U.S. Customs; is that fair?

8 A. True.

9 Q. And you've done work for State of Texas?

10 A. Yes.

11 Q. And the work you've done for State of Texas  
12 is in connection with this lawsuit; is that right?

13 A. That's true.

14 Q. Have you done any work for any private  
15 company?

16 A. When you do work with the Defense Department,  
17 you go through a fairly elaborate teaming arrangement  
18 where you work in concert with and collaborate with  
19 other civil or civilian or nonmilitary organizations,  
20 and I've worked with those organizations extensively.

21 Q. Have you done work for any private company?

22 A. Yes.

23 Q. Who?

24 A. Electronic Warfare Associates, Mystech, GTE.

25 Q. They've paid you for your services?



1           A.    We have teamed with them. I've been paid  
2           with Cubic, but we teamed with them on various  
3           enterprises that my company has a business interest  
4           in.

5           Q.    In performing projects for the United States  
6           government, you have worked with other defense  
7           contractors; is that what you're saying?

8           A.    Principally.

9           Q.    But the client who is paying the bill is the  
10          United States government; is that right?

11          A.    I don't know who pays the bill for other  
12          companies that I teamed with.

13          Q.    When you're working on a project in which  
14          you're teaming up with Electronic Warfare Associates,  
15          is that on behalf of an operation that you're doing for  
16          a private company, or is that on behalf of an operation  
17          or project that you're doing for a government entity  
18          like the Department of Defense?

19          A.    When I'm a sub to a company, a company like  
20          GTE, I'm working with and under the control of GTE.  
21          Now, what GTE turns around and is the ultimate  
22          customer, in many cases is the Defense Department, but  
23          I'm working with and in some cases for GTE, Mystech,  
24          EWA, MRJ, various companies that we team with.

25          Q.    All of those companies that you've just named

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1 are defense contractors; is that right?

2 A. That's their principal business line. I  
3 don't -- GTE, as you know, builds telephones and has  
4 got a wide business base outside of the Defense  
5 Department.

6 Q. That's why if I was interviewing somebody  
7 from GTE, they could tell me that one of the projects  
8 they work on is installing a local phone service for  
9 private customers, correct?

10 A. Yes.

11 Q. Okay. Now I'm asking you: Have you worked  
12 on any project that has a commercial nonmilitary  
13 purpose?

14 A. Yes.

15 Q. Which is that?

16 A. My projects and liasons with GTE -- the  
17 problem with trying to define things as purely Defense  
18 Department, if I ask you to talk to any member of the  
19 communications community in this country,  
20 telecommunications community, they would have a  
21 difficult time defining what's defense and what's not  
22 defense because everything is interrelated. So if  
23 you're building up a satellite to create channels of  
24 information, to which military users would use it and  
25 civil users would use it, to include yourself or your

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1 firm, then it's not wholly dedicated for military use.  
2 It's sort of the direction we've gone in defense  
3 business, is that sometimes we take civil technology  
4 and civil applications and apply them to the military,  
5 and sometimes the reverse is done.

6 So I don't want to couch myself as having  
7 only done work with defense and defense-oriented  
8 projects. To the extent that many of these projects  
9 can be applied much broader than the Defense  
10 Department, we'd have to go project by project, and I'm  
11 not the most -- I'm not the best person to tell you  
12 what GTE's application of a lot of their technology is  
13 for. I do know a lot of it is civilian.

14 Q. In the projects that you have worked with  
15 these other contractors on, either as a sub or in  
16 whatever capacity, are those projects that ultimately  
17 are funded by a government entity?

18 A. I don't know. I don't know what the funding  
19 source is for GTE's projects when I work with them.

20 Q. What's your understanding with respect to the  
21 GTE project of who is ultimately getting the delivered  
22 product?

23 A. The customer.

24 Q. Yes.

25 A. That's what I just said, the customer. The

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1 application of the technology that we're developing or  
2 the concepts of the software we made or modeling or  
3 simulation support or information support to, has  
4 multiple customers, both civilian and military  
5 applications. That's where we're going in technology  
6 these days.

7 Q. All right. Let me ask you this: Have you  
8 worked on a project where GTE has hired you to work for  
9 it and there is no customer beyond GTE? Do you  
10 understand what I'm saying?

11 A. No. What I'm telling you is that when I team  
12 with another company, when any private enterprise teams  
13 with another company, the scope of the application of  
14 what comes out of that teaming effort is applied in  
15 those companies as they wish, whatever the business  
16 interests are.

17 Q. Dr. Carter, if I make bullets and you make  
18 rifles, and the Department of Defense enters a contract  
19 with the rifle manufacturer for rifles and bullets, you  
20 may be supplying bullets to the rifle manufacturer that  
21 have applications in nonmilitary aspects, but for that  
22 particular project and that particular purpose, it's a  
23 military customer. Do you follow what I'm saying?

24 A. Well, you're throwing an example on the  
25 table. I'm not sure what you're saying, but if you

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1 build satellite channel space and you learn how to  
2 compress channels and you can build it more  
3 efficiently, and you have military-applied channels,  
4 you buy channel space off a satellite in comms path as  
5 does any commercial enterprise, the technology is  
6 applied both ways. That's the point I'm trying to  
7 make. So you may go in with seeing some or a major  
8 business line in defense application, but as you sit  
9 and discuss the applications, you're quickly seeing if  
10 you can broaden your business line to both military and  
11 nonmilitary, then it makes business sense to do that  
12 and we do that on a fairly regular basis.

13 Q. Okay. Describe for me the projects you've  
14 worked on: In the last year other than the drug  
15 enforcement initiative that we discussed briefly and  
16 the State of Texas work, what projects have you worked  
17 on in the last year?

18 MR. HOHN: Brad, usually I try to take a  
19 break about every hour if at all possible.

20 MR. LERMAN: We can take a break now.

21 MR. HOHN: I don't want to interrupt your  
22 questioning.

23 MR. LERMAN: That's fine. No, no, I don't  
24 mind at all.

25 MR. HOHN: Okay.

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1 THE VIDEOGRAPHER: The time is 10:04 a.m.,  
2 going off the record.

3 (Brief recess.)

4 THE VIDEOGRAPHER: Back on the record, the  
5 time is 10:12 a.m.

6 Q. Dr. Carter, you've been retained by the State  
7 of Texas as an expert in this litigation; is that  
8 right?

9 A. Yes.

10 Q. And you are intending to provide expert  
11 testimony in this case; is that correct?

12 A. That's correct.

13 Q. That expert testimony will be based upon your  
14 education; is that correct?

15 A. In part.

16 Q. It'll be based on your experience in the  
17 intelligence areas that you have described; is that  
18 correct?

19 A. Intelligence, security, deception,  
20 operational security, psychological operations, et al.

21 Q. Right. It'll be based on your experience  
22 during your very successful and distinguished career in  
23 the Army; is that correct?

24 A. It'll be based on my experience in the Army  
25 and my experience in Cubic engaged in an extensive

1 amount of intelligence or information operations,  
2 planning and execution throughout the world.

3 Q. All right, and part of the expertise that you  
4 bring in this area of information operations is based  
5 on your, in part is based on your 30 years of  
6 experience in the information or intelligence area of  
7 the Army; is that right?

8 A. In part, yes.

9 Q. And in your expert disclosure and in the  
10 affidavit that you provided in this case, you render  
11 certain opinions or certain opinions are described that  
12 you will provide in this case; is that right?

13 A. That's true.

14 Q. And those opinions are based in part on your  
15 educational experience, correct?

16 A. In part.

17 Q. In part on your military experience, correct?

18 A. In part.

19 Q. In part on your other work that you've done  
20 to prepare for your testimony; is that right?

21 A. It's based on my whole sphere of experience,  
22 training, both in the military and outside the  
23 military, and while outside the military working for  
24 Cubic and working with Cubic with a variety of firms  
25 that have similar capabilities.

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1 Q. Okay. Those opinions that you provided are  
2 based on all of the factors that you've just listed; is  
3 that right?

4 A. And what I've researched.

5 Q. Can you describe the information operations  
6 that you oversaw while you were in your first tour of  
7 duty in Vietnam.

8 A. I was involved in a variety of information  
9 operations dimensions. I was involved in the business  
10 of data collecting, information collecting,  
11 intelligence collecting. I was involved in the  
12 analysis, processing and dissemination of that data,  
13 and prioritization of that data. I was involved in  
14 efforts to try to deceive or manipulate information so  
15 that the hostile forces would be less efficient in  
16 dealing with the forces I was supporting. I was  
17 involved directly in some deception operations.

18 Q. What kind of deception operations?

19 A. Electronic deception and physical deception.

20 Q. What exactly did you do?

21 A. I provided -- I'm not going to get into  
22 classified material with regard to methods and  
23 techniques. Even though that's 30, 40 years old, the  
24 methods and techniques are still considered sensitive.

25 Q. All right, so let me be clear then. In terms



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1 of answering my question, there is a body of knowledge  
2 that is classified to which you are not going to  
3 testify; is that correct?

4 A. There's a broad, broad body of knowledge of  
5 what is in the arsenal that can be employed under this  
6 rubric title of information operations and it ranges  
7 from everything from open source to special methods.

8 Q. And there is a broad category of information  
9 that is classified that you are not going to be at  
10 liberty to testify about; is that correct?

11 A. That's true.

12 Q. Okay, and that would involve particulars and  
13 details of some of the experiences and background that  
14 you had in the Army in intelligence operations; is that  
15 correct?

16 A. The amount of experience and details that I  
17 can speak to from an unclassified point of view will  
18 clearly characterize the kind of background I have and  
19 experience I have when I applied that to classified  
20 techniques and procedures. So --

21 Q. How can we go about determining whether or  
22 not that statement is accurate?

23 A. You can, I presume you can go to the Defense  
24 Department and ask for release of classified  
25 information to more fully test my testimony that I'm

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1 telling you the truth.

2 Q. But short of getting the release of  
3 classified information?

4 A. I don't know what level of satisfaction  
5 you're looking for. It may be short of, it may not be  
6 short of, depending upon the burden of proof you're  
7 looking for.

8 Q. What burden of proof do you think we should  
9 be looking for, Doctor?

10 A. That's a judgment call on your part. I don't  
11 know. I'm convinced -- I'm under oath, I'm telling you  
12 the truth, and so I'm convinced that I'm going to  
13 characterize what I did fairly to you.

14 Q. Okay. I'm not quarreling with your good  
15 faith. What I'm saying to you is, sir, that in terms  
16 of being able to evaluate your background, your  
17 training, and the 30 years of experience that you've  
18 had in the military which you bring to bear in this  
19 case as an expert, there are areas of information that  
20 you will not be able to reveal to us because they're  
21 classified.

22 A. The areas of information will deal  
23 specifically with specific targets, the specific  
24 methods, the application of specific techniques against  
25 a foreign foe. Some of those techniques are still

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1 classified, so I think I can broadly characterize,  
2 broadly generalize and give you a very comfortable  
3 feeling of what my experience allows me to do, both as  
4 an intelligence security and an information operations  
5 expert.

6 Q. But there are things you can't tell us?

7 A. Specific techniques, specific operations I  
8 think are still classified.

9 Q. Do those specific techniques and specific  
10 operations fall into the general rubric of information  
11 operations?

12 A. Some of them do.

13 Q. And are they part of the body of knowledge  
14 that you've referred to in your affidavit as  
15 information operations?

16 A. They're examples, I've provided other  
17 examples, can provide other examples of the breadth of  
18 my knowledge and experience that don't entail, that  
19 characterize what is still classified, that would give  
20 you a good feel for the breadth and depth of my  
21 knowledge.

22 Q. Well, I appreciate your conclusion that  
23 that's the case, but there are aspects of information  
24 operations about which you are unable to testify; is  
25 that correct?

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1           A.    There are specific usages of it over the  
2 course of my time in the military and while at Cubic  
3 that are still classified. As I characterize more  
4 generally those, that usage, I can give you a strong  
5 feeling for what they are without divulging classified  
6 information. So I'm not trying to hide behind a  
7 security smoke screen here. I can tell you in general  
8 terms where that led me analytically, why I'm confident  
9 in my conclusions.

10           Q.   When you were a comptroller in the Army  
11 installation in Virginia, I believe, you testified that  
12 you were exposed to and watched and monitored certain  
13 training. Do you recall that?

14           A.   Training and operations.

15           Q.   Okay. What specific training did you see and  
16 were you exposed to at that time?

17           A.   The techniques of a specific discipline of  
18 intelligence collection and processing that I can't  
19 divulge. The techniques can be more broadly  
20 generalized as intelligence collection, processing and  
21 reporting, which is defined in open literature and  
22 subject to your review, but I'm not going to get into  
23 how the U.S. Government prioritizes particular targets  
24 and uses some case-sensitive techniques, but -- in  
25 specifics, but I can generalize.

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1 Q. All right. So my question is: What kind of  
2 training -- let me start again.

3 In what techniques and in what skills were  
4 the training exercises that we've referred to focused?

5 A. They were focused in a technology support or  
6 technology attack on a foreign target. You've picked  
7 an example where I was effectively the senior finance  
8 officer of a firm. So if I'm a senior finance officer  
9 for a particular company and I know that company makes  
10 automobiles or whatever, my focus for that two or  
11 three-year period was the financial planning and  
12 budgeting and resource management and pay into that  
13 business. It happened to be at a company that happened  
14 to be engaged in intelligence and intelligence-related  
15 activities.

16 Q. To which --

17 A. My business line in that particular job was  
18 senior financial officer or comptroller.

19 Q. I believe you indicated that you monitored  
20 and were exposed to and gained learning from what went  
21 on there?

22 A. If you're the senior financial officer of any  
23 enterprise, you're going to undertake a study of what  
24 that enterprise does, and I did.

25 Q. And that went into, that learning and

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1 knowledge went into part of the 30 years of experience  
2 that --

3 A. 30 years of experience and time after  
4 retirement formulating my expertise in this area.

5 Q. Okay. When you were assigned to Fort  
6 Leavenworth, Kansas, can you describe the techniques  
7 and operations that you were involved with during that  
8 three-year period in 1975?

9 A. I spent the first year producing an Army  
10 field manual or helping to produce an Army field manual  
11 on battlefield deception where working with a small  
12 team we looked at historical examples of good and bad  
13 deceptions that had been planned and executed  
14 throughout various operations going back to Sun Tzu and  
15 coming up through more current wars, and what would  
16 work, what wouldn't work, what techniques had what  
17 effects on opposing forces that we were trying to  
18 engage with.

19 Q. Is that classified or unclassified?

20 A. No, that document, I was not -- my name is  
21 not on that document. I was a research -- I was a  
22 junior officer, I was an assistant. It was actually  
23 produced by the Command and General Staff College that  
24 I was assigned to.

25 Q. What else?

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1           A.    I was assigned to helping to build an  
2 intelligence and electronic warfare and deception  
3 organization that would be employed at Army levels from  
4 brigade divisions and corps, that is, at tactical  
5 levels, to conduct those kind of operations,  
6 intelligence, security, electronic warfare, deception,  
7 security in general, intelligence operations across all  
8 the disciplines of intelligence.

9           Q.    How do you build an intelligence  
10 organization?

11           A.    How I built it or how -- there's various ways  
12 it can be built. I looked at what functions need to be  
13 performed at what echelon, echelon being what level of  
14 command. If we use a division as the example, I would  
15 decide what kind of organic intelligence, electronic  
16 warfare and security and deception and analysis  
17 capability would that division commander need. I would  
18 look at available technology and hardware and software  
19 that soldiers assigned to that unit could employ to  
20 support that commander, and I would build the  
21 organization back from that, providing automation,  
22 resourcing, prioritization, and that's generally how I  
23 did it for these units, and these units are today the  
24 landmark of our tactical support organizations  
25 worldwide still.

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1 Q. Doctor, I noticed when we went through your  
2 history, you did not talk about obtaining your  
3 doctorate. When did that happen?

4 A. I completed my doctorate in 1981. I worked  
5 on it part-time weekends, nights, and on leaves of  
6 absence from the Army to complete it. It was a program  
7 designed for in-career executives, so it was structured  
8 around the fact that all students had full-time jobs  
9 and had to be accommodated accordingly.

10 Q. So was there a classroom or university that  
11 you attended in order to achieve the doctorate?

12 A. I attended Nova University at Fort  
13 Lauderdale, Florida.

14 Q. How long were you in Florida attending Nova?

15 A. I went down for one or two courses that were  
16 taught on campus, and I went down for my dissertation  
17 defense, or my orals, excuse me, my orals. But the  
18 program was designed and structured around a  
19 Washington, D.C. base, and they had a campus there in  
20 DC for folks that wanted to take it from that region,  
21 and they're country-wide in that capacity.

22 Q. What was your dissertation in?

23 A. My dissertation -- I didn't produce it. The  
24 course didn't produce a formal published dissertation.  
25 I had to do a major research project, and I did that on



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1 the structure of the Defense Intelligence Agency, how.  
2 it could be streamlined and made more efficient. I had  
3 to defend that as a part of my orals.

4 Q. What courses did you take in order to gain  
5 your doctorate?

6 A. The program of study was heavily laced with  
7 political science, public management, public policy,  
8 management practices, a wide variety of subjects you  
9 might expect in a program of public administration.

10 Q. Can you estimate the amount of course hours,  
11 the amount of time you spent in the classroom obtaining  
12 this degree?

13 A. No.

14 Q. Do you have any idea?

15 A. I finished this program in 1981. It took me  
16 five years to get through the program. It was based on  
17 classroom participation, and the program of study is  
18 open literature but I just don't have it memorized.

19 Q. Okay. Do you recall the -- what paper did  
20 you produce if it wasn't a formal dissertation?

21 A. A major research topic, I think that's what's  
22 the title. It had to be accepted and defended.

23 Q. And what is the degree that you obtained in  
24 this way?

25 A. A doctorate in public administration.

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1 Q. Dr. Carter, why did you leave the Army?

2 A. I retired because I had reached my mandatory  
3 retirement date, and I had also served 32 years in the  
4 Army and thought it was time to move on.

5 Q. Have you ever smoked?

6 A. I've never smoked cigarettes.

7 Q. What have you smoked?

8 A. I occasionally have smoked a pipe.

9 Q. When did you smoke a pipe?

10 A. Off and on much of my adult life  
11 occasionally.

12 Q. Are you married?

13 A. I am undergoing a divorce, so I'm legally  
14 still married, but my wife and I are at the very tail  
15 end of a divorce.

16 Q. I'm sorry.

17 While you were living together, did your wife  
18 smoke?

19 A. Yes.

20 Q. For how long?

21 A. Off and on, again, she was a closet smoker so  
22 I didn't find out -- obviously there were telltale  
23 signs, but she started as a very, very light smoker and  
24 then picked up the habit later.

25 Q. Because --

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1           A.    I think she's quit by the now, so I don't  
2    know.

3           Q.    She's quit?

4           A.    I think she did.

5           Q.    When did she quit?

6           A.    When or how many times?

7           Q.    When? Well, how many times did she quit?

8           A.    Two dozen.

9           Q.    For different amounts of time?

10          A.    Yeah.

11          Q.    Then after a while, she'd start smoking  
12   again?

13          A.    Right.

14          Q.    When did she most recently quilt?

15          A.    I don't know. I haven't seen my wife on any  
16   frequent basis for almost two years.

17          Q.    But your understanding is she's quit?

18          A.    I don't know the current status over the last  
19   two years, quite frankly. I've only had intermittent,  
20   usually with a lawyer present, contact with her.

21          Q.    Do you have children?

22          A.    Yes.

23          Q.    How many?

24          A.    Six.

25          Q.    How old are they?

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1           A.    Now you're going to really test my memory.  
2    31 -- oldest is 31, the youngest is 19.

3           Q.    Do any of them smoke?

4           A.    My older -- one of my older sons smokes, I  
5    believe, but he hasn't lived -- when he lived at home,  
6    he did not. So I suspect he smokes. I get some  
7    telltale signs that he smokes, but he never smoked  
8    around me. To my knowledge, none of the others do.

9           Q.    When you were raising your children, did you  
10   ever talk to them about smoking?

11          A.    Yes.

12          Q.    What did you tell them?

13          A.    I told them that smoking is addictive. I  
14   told them that smoking in my belief has got some  
15   serious health problems associated with it, conclusive  
16   or inconclusive, and if they want my vote as young  
17   adults, they shouldn't begin. Several of them, this  
18   was not a sit down and talk to all six of them, it was  
19   over the course of their upbringing. Most of the  
20   others, I never had to talk to because I never had any  
21   indication they had any interest in starting.

22          Q.    When were you first contacted by the state in  
23   connection with this case?

24          A.    I work about five projects, so if -- I would  
25   say roughly about three or four or five months ago. I

1 can't recall. And the contact was to my company, not  
2 directly to me.

3 Q. Do you know who contacted whom?

4 A. No.

5 Q. What was the nature of your involvement  
6 following that contact?

7 A. I was asked to provide information in terms  
8 of my body of understanding regarding a discipline that  
9 we in the military refer to as information operations,  
10 which may be roughly equivalent to a term called  
11 perception management, and I was asked to discuss the  
12 military definition and application of this term called  
13 IO, information operations, and its universal  
14 employment inside and outside of the defense industry.

15 Q. What was that last phrase, its universal?  
16 I'm sorry.

17 A. Application.

18 Q. Its universal application inside and outside  
19 the defense industry?

20 A. What I was asked to decide or to comment on  
21 was, is this a discipline that only has applicability  
22 within the Defense Department or does in my judgment it  
23 have more universal applicability.

24 Q. That was a question that was asked three or  
25 four or five months ago?

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1           A.    That was the general discussion theme that we  
2           were on. Specific questions were asked. They were  
3           trying to, as you are now, sort of probe and explore  
4           what I knew about the subject -- first of all, what was  
5           the subject, because often the military puts its own  
6           titles on things, and to what extent and to what effect  
7           does the, does IO make on anyone that's using it or  
8           anyone that's being victimized by it. So it was a  
9           general discussion, which it was more of a context of  
10          tell me what you know and what do you think.

11          Q.    Okay. Now, when was this discussion, as best  
12          you can recall?

13          A.    I will say springtime. My problem is that I  
14          have been on the road extensively trying to work a  
15          number of projects and I've spent a considerable amount  
16          of time on this in terms of my research, but I can only  
17          tell you broadly sometime after Christmas.

18          Q.    Sometime after Christmas, but your best  
19          recollection is three or four or five months ago?

20          A.    Well, don't hold me to specific dates. I  
21          mean, I can probably go find some document. It might  
22          represent where my company was first contacted and  
23          where I was first brought in.

24          Q.    Your first discussion, where was it?

25          A.    Geographically where?

1 Q. Uh-huh.

2 A. I discussed it with colleagues within Cubic  
3 at various places to include extensively here; Hampton,  
4 Virginia; Washington, D.C. That was followed by  
5 discussions in Texas and back here.

6 Q. I'm talking about the discussion where it was  
7 asked whether or not there were applications outside of  
8 military for information operations.

9 A. I have no idea where. I mean, I don't know  
10 where that particular question was asked or exactly  
11 when that question was asked. It's been a constant  
12 dialogue back and forth over the last various months at  
13 various local, various locations, so I can't recall.

14 Q. With whom have you had dialogue?

15 A. I've had dialogue with my colleagues here who  
16 have helped me organize the research.

17 Q. Who are they?

18 A. Jane Ward is one.

19 Q. Are there others?

20 A. Jane has been the principal one to help me  
21 organize. The company has asked the business manager  
22 to take the burden of the business end of it off of me  
23 and he's been indirectly, he's not been as involved in  
24 the substantive part of it, but more the business.

25 Q. Who is that?

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1 A. An employee named Ted Tzavellas.

2 Q. Okay, and Ted's role in the company is what?

3 A. He is a firewall between me doing the  
4 analysis and presentation and research of information,  
5 and the pure business end of being, of the company  
6 being employed to assist in the case.

7 Q. Jane Ward's role is what?

8 A. Jane Ward's role is to help me as I try to  
9 organize data so I can look at it in some disciplined  
10 manner -- as you know and I'm sure we'll get into,  
11 there's an enormous amount of information -- to include  
12 bringing me stuff, filing stuff by date, at my  
13 direction getting on the Internet and trying to find me  
14 stuff, whatever you would define as administrative  
15 assistant.

16 Q. Who else have you worked with at Cubic on  
17 this project?

18 A. I've worked with Ted Tzavellas from a  
19 business end but not a substantive end.

20 Q. Anyone else? Ted Tzavellas, Jane Ward,  
21 anybody else?

22 A. That's it. I mean, I've spoken to the  
23 president, I'm spoken to the vice-president, but those  
24 are just from a business point of view, characterize  
25 what this business line is and how's it going. But



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1 from a substantive point of view, it's been Jane and I,  
2 Jane doing the administrative chores for me to make me  
3 a more efficient researcher.

4 Q. Patrick Allen?

5 A. Patrick and I have not worked together at all  
6 on this program.

7 Q. What is Patrick working on in connection with  
8 this case?

9 A. Nothing, nothing to my knowledge.

10 Q. Was Patrick working on any other smoking  
11 case?

12 A. I understood he was working on the case in  
13 Florida.

14 Q. Okay. Have you drawn on any of the work that  
15 he's done?

16 A. No. It was explained to me very early on  
17 that I should make my own independent research, not --  
18 I'm not just talking about Patrick Allen or anybody  
19 else, but to draw my conclusions based on independent  
20 research and objective analysis, and that's what I  
21 did.

22 Q. Prior to your being contacted to work on this  
23 case, could you describe all of the work that you had  
24 done prior to that date on tobacco-related matters.

25 A. Repeat the question again, please.

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1 Q. Prior to being contacted to work on this case  
2 by the State of Texas, can you describe for us all of  
3 the work that you have done on tobacco-related matters  
4 prior to that date.

5 A. As I recall, I was asked to come down to  
6 West Palm Beach in the Florida litigation case and talk  
7 to a group of individuals about what is information  
8 operations.

9 Q. When was that?

10 A. Oh, winter, maybe early spring.

11 Q. Who was there?

12 A. I have no idea. It was about 10 folks came  
13 in and met me at the hotel. The aim of the discussion  
14 was to find out what this term meant and to explore  
15 with me a little bit about the military application of  
16 it.

17 Q. Dr. Carter, you have no idea who you met with  
18 at that meeting?

19 A. I have -- I probably have it in notes, but  
20 the bottom line is, as you know, every firm comes with  
21 five or six names, and if you've got four or five  
22 firms, to include support staff, to include a driver  
23 that drove them over, that information could probably  
24 be gotten, but because the case went nowhere with  
25 regard to me, I didn't try to remember the names of

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1 those present. And there were many. I'd say ten,  
2 eight or ten folks.

3 Q. Who were they?

4 A. Representatives of the State of Florida. One  
5 might presume some were lawyers, some were other  
6 officials that were involved in the case and others  
7 were support folks, much like you've brought here. So  
8 I don't know, you know, how to categorize them other  
9 than generally.

10 Q. Okay. You met with them to discuss  
11 information operations and what it was?

12 A. Right.

13 Q. And whether it could be applied outside of  
14 the military context?

15 A. To the extent that it is being applied  
16 outside the military context, yes.

17 Q. What does that mean, "to the extent that it  
18 is being applied"?

19 A. The term information operation is a term  
20 employed by the military. So when you say do you do  
21 information operations in the military, the answer is  
22 yes. Well, this thing you do, if I go to a corporate  
23 boardroom and say information operations, no one in the  
24 room would probably understand what I was saying. But  
25 if I said do we employ perception management,

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1 perception management techniques, then they would begin  
2 to have a common understanding, a more common  
3 understanding of what that means.

4 Q. How do you --

5 A. Again --

6 Q. Excuse me, sir. How do you know that?

7 A. How do I know what?

8 Q. How do you know that? Have you ever had that  
9 kind of a conversation with anyone in a corporate  
10 boardroom?

11 A. Absolutely.

12 Q. When?

13 A. I've had it in, conversation in terms of I've  
14 sat in corporate boardrooms, to include this very room  
15 we're in right now, and watched certain practices being  
16 employed. I've gone to -- of course I've read  
17 extensively.

18 Q. Okay. I want to get into all of this, but I  
19 want to get back to the meeting in Florida. You met  
20 with 10 individuals. You're not sure who you met with;  
21 is that right?

22 A. I don't have it committed to memory. I'm  
23 sure I can provide the name or get the name.

24 Q. Do you know anybody who was at the meeting,  
25 do you have a name for anyone who was at that meeting?

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1           A.   As I just said, I don't have it committed to  
2 memory, because the case, they did not employ me, so I  
3 just sort of forgot about it.

4           Q.   You'd be willing to give me your notes of  
5 that meeting?

6           A.   I took no notes of that meeting because it  
7 was very obvious, I was in the business of telling them  
8 about what was this discipline that I was in a rubric  
9 sense calling information operations and they were  
10 asking me oral questions, and they said thank you very  
11 much and left.

12          Q.   When did you first meet with lawyers for the  
13 State of Texas?

14          A.   As I can recall, about two to three months  
15 ago.

16          Q.   Who did you meet with?

17          A.   In the -- I met with Ed here.

18          Q.   Okay, Mr. Hohn?

19          A.   Mr. Hohn most recently. I had a very short  
20 meeting with Mr. O'Quinn.

21          Q.   Dr. Carter, just for clarity now, just so I  
22 can set some dates for us, when did you first meet with  
23 a lawyer representing the State of Texas?

24          A.   As I just said, several months ago. I didn't  
25 know I had to come in with a chronology of dates. I

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1 can probably go try to reconstruct that, but I don't  
2 know.

3 Q. Sir, I'm not asking you for a chronology of  
4 dates. I'm asking you for some approximate time  
5 periods. At that first meeting, with whom did you  
6 meet?

7 A. I can't recall right now.

8 Q. Where was the meeting?

9 A. As I was explaining to you, I've had meetings  
10 at various places to include down in Texarkana.

11 Q. Okay. I'm asking you a very specific  
12 question.

13 A. Okay.

14 Q. Which is at the first meeting --

15 A. I cannot recall exactly. I was involved in  
16 data preparation and research, so I can probably come  
17 up with that. I just can't recall it off the top of my  
18 head right now. It was not important to me, given what  
19 I was asked to do, to remember dates and times of who I  
20 was meeting with from Texas.

21 Q. When did you first begin working on this  
22 project for the State of Texas? Was it before that  
23 meeting or after that meeting?

24 A. I can't recall because I -- you asked me  
25 specifically when I had presumably face-to-face

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1 discussions with a lawyer. My firm had various  
2 contacts with the lawyers to which I was asked to begin  
3 organizing my understanding of IO in the military and  
4 looking at what was available in the general public,  
5 documentation to look at. Now, I didn't think it was  
6 important to see which date occurred before which other  
7 date. When the firm was contacted, the firm could  
8 probably tell you, but again, from a business point of  
9 view, but I don't know.

10 Q. Well, here's the reason it's important,  
11 Doctor. I'm trying to determine how long you have been  
12 working on this project.

13 A. As I've said a couple of times, fairly  
14 extensively for the last three or four months. Now,  
15 when you say "on this project," I've been working in  
16 this field gaining experience and knowledge since I was  
17 17 years old.

18 Q. I understand that. I'm talking about the  
19 tobacco work, when did you begin working on the tobacco  
20 issues in connection with this litigation, and you're  
21 saying it's about three or four months ago; is that  
22 fair?

23 A. Three or four months is when I was asked to  
24 begin a deliberate objective look at the data that was  
25 available, looking at what I already knew about

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1 information operations as it applied to my experience  
2 and do an analysis and see what I came up with.

3 Q. Who asked you to do that?

4 A. The State of Texas.

5 Q. Is there an individual or a date on which the  
6 assignment was communicated to you? Do you have -- let  
7 me rephrase.

8 Do you have any particular recollection of  
9 how the assignment was communicated to you?

10 A. The assignment was communicated to me through  
11 Mr. Tzavellas, who from a business only point of view  
12 was in communication with Texas. He called me and said  
13 are you interested in applying your knowledge to this  
14 area and I said let's talk more. We talked more and I  
15 said I'll do it.

16 Q. What was that --

17 A. Because there was a hiring and reallocation  
18 of time, the company had to decide how to allocate my  
19 time to this project, so there was a business end of it  
20 that began first. When they explored with me my  
21 personal interest in it, how much time I was going to  
22 spend on it, I began to come into it directly.

23 Q. Okay. Prior to your conversation with  
24 Mr. Tzavellas in which he gave you the assignment for  
25 you, described for you the work, --



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1           A.    Right.

2           Q.    -- what had you done, what work had you  
3 performed on tobacco-related matters prior to that  
4 time?

5           A.    If you exclude all my adult life having an  
6 interest in tobacco as a firm, tobacco as an industry,  
7 tobacco and all the various revelations that have come  
8 out on tobacco to the general population, I come to the  
9 program with that kind of knowledge and understanding.  
10 So if you're saying did you start absolutely flat three  
11 or four months ago, the answer is no.

12                   First of all, I bring an extensive body of  
13 knowledge of what information operation is to the  
14 analysis, and I bring a more than average man's  
15 understanding of what this industry is, and how it's  
16 operated over the period, based on what's been  
17 generally available to a citizen. Then I began my  
18 deliberate research with that, with those credentials.

19           Q.    All right. So if I'm understanding your  
20 answer, at the time that Mr. Tzavellas communicated to  
21 you that there was this project to be undertaken, you  
22 had experiences as an adult knowing about tobacco; is  
23 that what you're saying?

24           A.    I'm saying that I, I'm not sure that I'm --  
25 the way you're trying to phrase the question.

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1 Q. Okay. Let me break it out this way. Had you  
2 done any formal studies of the tobacco industry prior  
3 to that time?

4 A. No.

5 Q. Had you taken any courses in the history of  
6 the tobacco industry?

7 A. Yes.

8 Q. When?

9 A. I've got an MBA from Syracuse, and tobacco  
10 and various other companies are used in cases, examples  
11 to include at Harvard.

12 Q. What was the case example that you studied in  
13 Syracuse when you got that MBA?

14 A. I cannot recount exactly, exactly the  
15 particular cases we used. It was a general enterprise  
16 in which probably any business school will use. It's  
17 an interesting one also.

18 Q. Was the course that you took at Syracuse  
19 focused on the tobacco industry?

20 A. It was focused on business management. It  
21 was focused on information systems, support to business  
22 enterprises, of which tobacco was used as one of the  
23 industries that we looked at.

24 Q. So is the answer to my question no?

25 A. Would you restate the question.

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1 MR. LERMAN: Could you read back the  
2 question.

3 (Reporter read record as requested.)

4 A. Partly, yes. Tobacco was used, the tobacco  
5 industry was used as the backdrop for studying this  
6 business line.

7 Q. What particularly about tobacco did you study  
8 at that time? What particulars of the tobacco industry  
9 did you study at that time?

10 A. First of all, it's 15 years ago, so you'll  
11 excuse me if I'm vague on the point, but the general  
12 business practices of an enterprise that has a product  
13 that is, real or perceived, a health threat to the  
14 United States and its citizens.

15 Q. And back then, the process was known to have  
16 a health threat to the citizens?

17 A. There was general information in the public  
18 that said that this -- that there's likelihood that it  
19 does.

20 Q. Have you had any formal training or education  
21 in cigarette design, the design of the cigarettes?

22 A. I just went through my background with you  
23 and you know I don't.

24 Q. Do you have any formal education or training  
25 in tobacco blending?

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1           A.    I just went through my background and you  
2 know the answer is no.

3           Q.    Other than this course you took in Syracuse,  
4 do you have any other formal training or expertise --  
5 let me rephrase the question.

6                   Looking at the time that Mr. Tzavellas got  
7 you started on this work, prior to that time, other  
8 than the course at Syracuse, have you had any formal  
9 training, expertise, courses, education in  
10 tobacco-related matters?

11           A.    My whole discipline is in information,  
12 information applications, persuasion, perception  
13 management. That discipline is applied across a broad  
14 category of enterprises to include tobacco, and you go  
15 to any graduate school in this country and there will  
16 be many, many discussions in classrooms associated with  
17 this industry. You pick up any paper and there's  
18 general discussion of this industry. So I'm not sure  
19 I'm answering your question the way you want it, but I  
20 have come to this with some body of knowledge about  
21 it.

22                   Now, as an industry, I've looked at it.  
23 There are many technical aspects. I don't come here as  
24 a doctor, a lawyer, a lot of other disciplines that go  
25 into this industry as an expert. I come as an expert,

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1 I believe, in the use of information in a business  
2 enterprise.

3 MR. LERMAN: Could you repeat that answer,  
4 please.

5 (Reporter read record as requested.)

6 A. By that I mean business, I mean information,  
7 information systems and the influences of information  
8 in a business setting, and when I say doctor, of course  
9 I meant medical doctor.

10 Q. You come to this litigation as an expert in  
11 the use of information in a business setting, --

12 A. Yes.

13 Q. -- Dr. Carter?

14 A. Yes.

15 Q. That's based on your one year in the private  
16 sector?

17 A. That's based on my 32 years working for a  
18 business.

19 Q. Which business was that?

20 A. The Department of Defense.

21 Q. All right.

22 A. And time here at Cubic, and it's been a very  
23 intensive enlightening year.

24 Q. Have you read the complaint in this case?

25 A. I read the complaint about two months ago,

1 approximately.

2 Q. Who are the defendants?

3 A. As I recall, the defendants are the seven or  
4 so tobacco companies, one PR firm and, as I can recall,  
5 a couple of trade unions -- trade organizations.

6 Q. Can you tell me the names of the defendants?

7 A. No. I mean, I can start listing names, but I  
8 couldn't probably be complete. The CTR, formerly the  
9 TIRC, Hilton Knowlton is one, Brown & Williamson is  
10 one, various tobacco companies, Philip Morris.

11 Q. Any others?

12 A. Didn't know this was going to be a memory  
13 context. In my analysis and study of it, I looked at  
14 this group as an industry, an enterprise, not trying to  
15 look at it as seven, eight or nine individual actors.

16 Q. You looked at it as one cohesive unit?

17 A. I looked at it as an enterprise acting in  
18 unison.

19 Q. That is the framework that you approached it  
20 from the start?

21 A. No.

22 Q. What's the framework that you approached it  
23 from the start?

24 A. From the start, first of all, there are a lot  
25 of techniques of analysis.

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1 Q. Doctor, I don't want to interrupt you, but I  
2 would like you to, if you could, try and be responsive  
3 to the question that I'm asking. I appreciate that  
4 some of these questions are open-ended, but let me try  
5 again with my question.

6 MR. HOHN: Brad, I don't care if you do that  
7 at the end, but you've got to let him answer. You  
8 can't cut him off.

9 MR. LERMAN: Okay. I appreciate that, Ed.

10 Q. When you approached your analysis of the  
11 conduct in this case --

12 A. Right.

13 Q. -- did you approach it with the assumption  
14 that the companies were acting in unison?

15 A. No.

16 Q. How did you approach it?

17 A. I approached it as I was saying, my  
18 analytical approach to analyses, whether it's this  
19 analyses or any other analyses I've done, is to look at  
20 data and see how it either correlates to one or more  
21 paradigms or themes or assumptions, not a single  
22 paradigm, but multiple paradigms. When you look at it  
23 from an information operations point of view,  
24 understanding what it is and its various legs or  
25 dimensions or components, does the data correlate to

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1 that paradigm? Does it correlate to the paradigm that  
2 might be described as the opposite of IO, and that is  
3 the free and open and fair and truthful exchange of  
4 information over time, does it fit that paradigm?  
5 Could there be another paradigm that it fits, or does  
6 it just not correlate? That was the analytical  
7 approach I took.

8 Q. Okay, but with respect to whether or not the  
9 companies were acting individually or collectively, is  
10 it your testimony that you began your analysis with the  
11 assumption that they were acting individually?

12 A. I began my data search and analysis with no  
13 preconceptions on anything. I wasn't sure how they  
14 acted and it was only by having access to the  
15 information that I could find it out.

16 Q. Who are the tobacco companies that you  
17 analyzed for purposes of reaching a conclusion on  
18 whether they were acting in unison or not in unison?

19 A. I went through a partial list with you  
20 earlier, Brown & Williamson, Philip Morris, American  
21 Tobacco Company, BAT is one of the companies -- I don't  
22 think they're directly a defendant, but they're  
23 involved indirectly -- and various other actions of the  
24 CTR, the TIRC, the Hilton -- Hill & Knowlton, et al,  
25 wherever the data took me.



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1           The problem is if you go into any analysis .  
2       with I'm trying to prove this point or I'm trying to  
3       prove, support my assumptions, then I think your  
4       analysis is flawed. Now, one of the reasons I think  
5       I'm the right guy to do this is because I had a general  
6       citizen's knowledge of the tobacco industry, mainly  
7       from the information the average citizen sees. I had  
8       selected courses in college on tobacco as an industry,  
9       but my expertise in tobacco was not built on that. So  
10      I didn't go in with any preconceived notions of what  
11      correlated or what didn't correlate, but I looked to  
12      see how the data sorted out and very quickly the data  
13      started to fit the paradigm of information operations.

14           Q.   And I want to back us up a little bit from  
15      there. I want to get to what you're talking about.

16                   What does Hill & Knowlton do?

17           A.   My understanding?

18           Q.   What does their company do?

19           A.   Basically a public relations firm.

20           Q.   Who did they represent?

21           A.   The tobacco, the various tobacco companies,  
22      and I think they have been for long-term on the board  
23      of CTR or the TIRC.

24           Q.   How long have they been on the board of CTR,  
25      your understanding?

1           A.    TIRC is the prior company under CTR, since  
2           the beginning when they formed it, I think the Hill &  
3           Knowlton representative was the secretary of the  
4           executive committee for the TIRC.

5           Q.    Okay. How long have they been affiliated  
6           with TIRC or CTR, do you know?

7           A.    Roughly the early '50s.

8           Q.    To the present?

9           A.    There's data showing that they've been in and  
10          out of this business over the last many years. So I  
11          would say roughly to the present or the near present.

12          Q.    Okay. So for roughly, from 1954 roughly into  
13          the '90s, Hill & Knowlton has been affiliated with CTR;  
14          is that your testimony?

15          A.    I'm testifying that data that's been provided  
16          to me that has ranged over that period has shown  
17          participation by Hill & Knowlton with the tobacco,  
18          various tobacco companies.

19          Q.    To the present?

20          A.    To the most recent information that I got  
21          access to.

22          Q.    Is there information you haven't had access  
23          to, Doctor?

24          A.    I have not had access to any information  
25          that's been destroyed or been moved away from discovery

1 or whatever other reasons that I couldn't access it. I  
2 analyzed what I could access, what I could get access  
3 to.

4 Q. All available materials you have analyzed; is  
5 that your testimony?

6 A. I've screened, looked for patterns of  
7 behavior and decisions and actions, and like a lot of  
8 analysis, you can't go through everything. As you well  
9 know, there's a warehouse full of information that some  
10 of it correlates to nothing, but there's a very strong  
11 pattern of correlation to what I refer to as  
12 information operations.

13 Q. All right, and you have reviewed enough  
14 material to allow you to testify today that Hill &  
15 Knowlton has been involved with TIRC or CTR for  
16 approximately 40 years, give or take?

17 A. I'm here to testify that according to the  
18 documentation that has come to my attention, either  
19 through the various sorts of ways in which I got access  
20 to it, Hill & Knowlton was associated with this  
21 enterprise back to approximately 19 -- approximately  
22 1954 at the inception of the TIRC.

23 Q. If they left that organization, do you have  
24 any idea when that occurred?

25 A. If they left and came back, or came back and

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1 left, there are various documentations that show that  
2 they stayed in this enterprise for some period of  
3 time. See, the difference between --

4 Q. No, no, Doctor, let me ask the questions and  
5 this will go much faster.

6 What are the dates according to your analysis  
7 during which Hill & Knowlton was involved with TIRC and  
8 then its successor organization, CTR, approximately?

9 A. All right. As I said, they were one of the  
10 founding members of TIRC. As a matter of fact, they  
11 served as the secretary on the board with TIRC. They  
12 served -- I don't know to the extent they served  
13 intermittently or consistently. There's a consistent  
14 pattern of data that links Hill & Knowlton to the  
15 tobacco industry for some time after that.

16 Q. What is the data that links Hill & Knowlton  
17 to CTR in 1990?

18 A. I can -- give me time, I can probably tell  
19 you when, when the Hill & Knowlton stopped being  
20 directly associated with them, if in fact they are  
21 today. It was not a part of my analysis to look at how  
22 various, this particular PR firm may have come in or  
23 out of this enterprise. I know they were there early.  
24 They seemed to be there early and fairly consistently  
25 for a number of years, and they were their principal PR

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1 advisors, it appeared to me.

2 THE VIDEOGRAPHER: Counselor, pardon me, it's  
3 time to change the tape.

4 MR. LERMAN: Okay.

5 THE VIDEOGRAPHER: This is the end of tape  
6 number 1 in the deposition of Dr. Ronald W. Carter.  
7 The deposition will be continued on tape number 2. The  
8 time is 11:12 a.m., going off the record.

9 (Brief recess.)

10 THE VIDEOGRAPHER: Back on the record. This  
11 is the beginning of tape number 2 in the deposition of  
12 Dr. Ronald W. Carter. The time is 11:23 a.m.

13 Q. Dr. Carter, while we were on break, did you  
14 discuss your testimony with anybody?

15 A. I discussed with Mr. Hohn any fatigue factor,  
16 was I comfortable. To the extent it related to my  
17 testimony, it dealt generally with you're doing okay,  
18 let's just keep up the demeanor. You know, coaching  
19 me, he coached me in the sense of just continuing to  
20 answer the questions the way I'm doing it. That was  
21 the general discussion we had.

22 Q. Did you talk to Jane Ward?

23 A. We had a conversation with regard to  
24 something to do with walking to the bathroom. Had no  
25 substantive, it was chit-chat stuff.

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1 Q. Did you talk to Mr. Hohn about any of the  
2 substance of the questions that had been asked so far?

3 A. We dialogued and said this is the general  
4 line of testimony that we had thought one would  
5 reasonably go down. So in general senses, that's it.  
6 This is not the time to start trying to put more data  
7 into my head, obviously, so I just, this was more of a  
8 pep talk.

9 Q. Prior to your deposition, how many times did  
10 you meet with Mr. Hohn?

11 A. Prior to today?

12 Q. Yes.

13 A. Two or three times.

14 Q. Did you meet with him specifically to prepare  
15 for the deposition?

16 A. Yes.

17 Q. How many such meetings?

18 A. He's been here the last couple of days and  
19 we've been off and on discussing the case over that  
20 period of time.

21 Q. All right. How many -- has he been here  
22 since Thursday?

23 A. Roughly the last couple of days. I flew in  
24 from the East Coast, so I don't know exactly when he  
25 arrived, but the last couple of days he's been here.

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1 Q. All right. The last couple of days would be  
2 Thursday?

3 A. I believe so, yes.

4 Q. Okay. Did you meet with him on Thursday?

5 A. Yes.

6 Q. For how long?

7 A. Off and on a better part of the day.

8 Q. What did you discuss?

9 A. Basically we discussed this format. This is  
10 my first time testifying. Although I've been in a  
11 number of settings similar to this, I've not been an  
12 expert witness in a case before, so he wanted to make  
13 me comfortable with the process, your role, his role,  
14 what other folks would be in the room, the fact that it  
15 would be video recorded and that I just needed to relax  
16 and answer your questions.

17 Q. Did he show you materials?

18 A. The materials, much of the materials was  
19 already here, so I -- we went over some of the  
20 materials.

21 Q. Which materials did you go over?

22 A. Which materials as in which document?

23 Q. To the best you can recall.

24 A. I can't recall any order or pattern. We just  
25 generally -- the main thing in going over the documents

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1 was how I had it organized and how I could either  
2 produce documents that I could read freely from, and  
3 I'm prepared to do, or how the filing system lined up,  
4 and that's one of the reasons we asked Ms. Ward to sit  
5 in because it was easier, as I needed to retrieve a  
6 document, to ask her to do it rather than take the time  
7 for me to do it. So we went over many, many, many  
8 procedural points to make sure I was comfortable with  
9 how this was going to go.

10 Q. All right. Did you meet with him yesterday,  
11 Friday?

12 A. Yes.

13 Q. And for how long?

14 A. Most of the day.

15 Q. So how many hours in total have you met with  
16 Mr. Hohn in the last two days?

17 A. Five or six hours each of the last two days.

18 Q. Did you go over documents yesterday with  
19 Mr. Hohn?

20 A. We discussed documents.

21 Q. Did you look at documents?

22 A. I looked at documents, yes.

23 Q. Which documents did you look at, to the best  
24 of your recollection?

25 A. I looked at maybe 200 documents dealing with



1 mortality rates, which documents related to various  
2 youth oriented focuses, so I would say categories of  
3 documents.

4 Q. Were these documents you had seen before?

5 A. Yes.

6 Q. Where did they come from?

7 A. A body of knowledge, the body of documents  
8 that I've used have come from various sources.

9 Q. Let me be more specific. Did they come from  
10 the two boxes or so of documents that were produced as  
11 the materials that you've relied on for your testimony?

12 A. I don't know where you get two boxes from,  
13 but I've relied on thousands of documents associated  
14 with this. Some I've got over the Internet, some I've  
15 been -- that's been provided by Texas, which I think  
16 they got through disclosure from tobacco, various open  
17 source or literature, the press, the Internet. As you  
18 know, this is a very closed enterprise and therefore  
19 it's hard for me to get access to information as freely  
20 as with an open enterprise, so I've gotten what I could  
21 get.

22 Q. All right. The documents that you reviewed  
23 with Mr. Hohn, were they part of the materials that you  
24 identified as documents that you have relied upon in  
25 reaching opinions in this case?

1 A. In part, yes.

2 Q. There are some that you have not relied upon  
3 that you reviewed yesterday with Mr. Hohn?

4 A. Ask the question again because I may have  
5 misunderstood you.

6 Q. Let me back up. Were you ever asked in  
7 connection with this case to prepare and collect  
8 materials that you have relied upon to reach your  
9 opinions?

10 A. I've been consistently asked in this case to  
11 get access to any information on tobacco that I can get  
12 access to, some provided by the state through the  
13 tobacco industry, but a large amount on the Internet.

14 Q. Let me --

15 A. And I relied on all of them.

16 Q. Maybe I'm asking the question in a way that  
17 you're not following.

18 Was there a time in this litigation when you  
19 were asked to identify the documents that you are  
20 relying upon in providing expert testimony?

21 A. The --

22 Q. That is a yes or a no question.

23 A. No, it's not a yes or no question. The  
24 documents that I relied upon is the entire body of  
25 documentation that I had access to. That's what I

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1       relied upon to give this conclusion.

2           Q.    So every document that you have had access to  
3       you have relied upon in providing and formulating your  
4       expert opinion; is that correct?

5           A.    The data that either correlated or did not  
6       correlate to the paradigm that I was either trying to  
7       support or not support, does it support an IO paradigm,  
8       does it support a different paradigm, some of those  
9       documents are more directly than others. Some of them  
10      I threw out that I couldn't correlate to anything, but  
11      I relied on everything I looked at to try to formulate  
12      an analytical judgment.

13          Q.    Were you asked at any time to identify the  
14      documents that you have relied upon in formulating the  
15      opinions that are part of the disclosure that you  
16      provided in this case?

17          A.    Again, I thought I just answered the  
18      question.

19          Q.    No, and you have --

20          A.    I relied on every bit of information that  
21      I've had access to, which includes thousands of  
22      documents, in order to draw an analytical conclusion.

23          Q.    All right, Doctor, were you ever told that as  
24      part of the procedure in this litigation, the State of  
25      Texas would have to produce to the defendants all

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1 documents that you have relied upon in reaching your  
2 conclusions? Were you ever told that?

3 A. I don't know that there was ever any direct  
4 statement like that. There could have been.

5 Q. You don't recall it?

6 A. I can't recall it right now.

7 Q. Okay. Did you ever for purposes of  
8 identifying -- let me start again.

9 Did you ever collect a body of material for  
10 purposes of having it produced formally in the course  
11 of this litigation to the defendants which represented  
12 the body of documents upon which you have relied?

13 A. I guess I go back to what I've already  
14 answered. The body of evidence, the body of  
15 documentation, which numbers in the thousands, are  
16 known because they're physically available here for  
17 anyone's inspection. I am not a lawyer in this  
18 process, so I don't know what should or has to be  
19 provided to other parties. I know it's documentation I  
20 worked with in my analysis. So what was provided  
21 where? If a document was exposed to me, I think a  
22 reasonable person would say it helped to formulate some  
23 dimension of either showing a correlation or not  
24 showing a correlation. I didn't mark documents  
25 necessarily that said this one has a coefficient higher

1 than this one. I looked at all documents to decide  
2 whether they correlated or not.

3 Q. Let me ask you this question: The State of  
4 Texas has produced certain material to the defendants  
5 which represents documents that you have relied upon in  
6 reaching your opinion. Did you play any role in  
7 collecting those documents for the state to produce to  
8 the defendants?

9 A. I, first of all, I don't know exactly what's  
10 been provided to you from a legal point of view. The  
11 documents that I found on my own through my own  
12 independent research off the Internet, newspapers,  
13 other sources that I could get access to, is known to  
14 Texas because it's physically here, it's been here  
15 and -- now, what they did with it I'm not sure.

16 Q. Do you know that the state produced documents  
17 to us last week related to you in particular and they  
18 were represented as the documents that you rely upon in  
19 reaching your expert conclusions? Did you know that?

20 A. I knew that there was a disclosure process.

21 Q. Okay. Did you participate in identifying the  
22 documents that should be disclosed to us as part of  
23 that disclosure process?

24 A. Maybe indirectly. If you're --

25 Q. Do you know -- let me --

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1           A.    If you're asking a question line that says  
2    did we clear off this table and lay a thousand  
3    documents on here and make two stacks, one to give one  
4    way and one to just keep and just use in general, we  
5    did not do that.

6           Q.    Doctor, did you hear me ask you that  
7    question?

8           A.    You're trying to get at an information --

9           Q.    Did you hear me ask that question?

10          A.    What question?

11          Q.    Because if you heard me ask that question,  
12    then I'm not being clear enough in what I'm asking  
13    you.

14          A.    Okay, would you please be clearer.

15          Q.    The question I asked you is: Did you  
16    participate in preparing the collection of documents  
17    that was turned over to the defendants in this  
18    litigation last week, which collection of documents was  
19    represented to be all of the documents upon which you  
20    rely in formulating your expert opinions?

21          A.    All right, then let me be clear in my answer  
22    one more time. The process that I played in here is to  
23    be the senior analyst and the senior researcher. There  
24    is an administrative process of turning over  
25    documentation to the state that meets legal

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1 parameters. I'm not a lawyer. I don't know what those  
2 legal parameters are. I participated in sharing with  
3 the Texas participants the kinds of documentations I  
4 was looking at. It was known to them -- as I tried to  
5 explain, we did not go through this physical act of  
6 making two stacks, but in a sense, they knew the kind  
7 of documentation that seemed to be more heady, more  
8 directed at either finding or not finding this  
9 correlation.

10 You're asking me an administrative process as  
11 to what went on a list. I did sign the affidavit, the  
12 expert testimony. The documentation that's listed  
13 therein is very clearly documentation that I used, not  
14 exclusively but that was representative of the type of  
15 documentation I used.

16 Q. Do you know what documents were turned over  
17 to the defendants last week as part of the disclosure  
18 for you?

19 A. Last week?

20 Q. Yes.

21 A. No.

22 Q. Can you testify that the documents upon which  
23 you rely to formulate your opinions are all contained  
24 in the documents that we received last week?

25 A. I can testify that the documents that I based

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1 my analysis and conclusions on, most all them, all of  
2 them are physically present at various places where  
3 I've done this research, to include in Texarkana. Now,  
4 there's a general understanding of which of those  
5 documents I relied on more, and I don't want to assume  
6 anything as to what was handed to you last week. It  
7 was known to the lawyers down in Texas the general body  
8 of documentation that I relied upon.

9 Q. How was that known?

10 A. One thing, I dialogued with them on asking  
11 them for -- one thing I've done as a pattern activity  
12 here is asked for, as information came out, as  
13 information became available, to continue to provide me  
14 copies with it.

15 Q. What does that mean, "as information came  
16 out"? Came out of where?

17 A. Came out of discovery, I presume. I also had  
18 Ms. Ward out searching the Internet trying to look for  
19 any additional documentation that may have been  
20 available in open source.

21 Q. Let me ask you this: In gathering your  
22 information, did you begin by reading the answer to the  
23 complaints that were filed by the defendants in this  
24 case?

25 A. When I began my analysis? Is that what



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1     you're asking?

2           Q.    At any time during your analysis, did you  
3     read the answers that were filed by the defendants in  
4     this case?

5           A.    I formulated my decision -- this is the way I  
6     do these analyses and this is the way that analysis  
7     needs to be done. What I did was I said I have a body  
8     of knowledge. Give me uncorrelated data, as much as  
9     you can, and I'll see how it does or does not  
10    correlate, does it fit the paradigm of IO, does it  
11    not. I purposely stayed away from attempting to try to  
12    find out what other conclusions may have been reached  
13    in this case.

14                Now, in the study of the case, I looked at --  
15    other analyses have been done in this area, not by  
16    lawyers, but by other researchers and I looked at that  
17    material. But I've not -- I didn't look at answers and  
18    then formulate conclusions to fit answers, if that's  
19    where you're going with your questions.

20           Q.    Doctor, let me be clear. I would  
21    respectfully ask that you try and be responsive to the  
22    question I ask, and not the one that you assume I mean  
23    to be going towards or the point that I'm trying to  
24    make. I'm going to ask that the court reporter read  
25    back my last question and I'm going to ask you to

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1 answer that question.

2 MR. HOHN: Before we do that, Brad, this  
3 person has no legal training whatsoever and by answers,  
4 it was apparent from his response that he was  
5 identifying that as some type of answer that the  
6 defendant made, either in response to the lawsuit or  
7 whatever. He doesn't know about the legal pleading.

8 MR. LERMAN: I appreciate your remark. I  
9 also believe it's not an appropriate remark for you to  
10 be making under the rules that we're working with here,  
11 so I know you're trying to be helpful, but I'd like you  
12 to refrain from that kind of remark.

13 Can you read back the question.

14 (Reporter read record as follows:

15 "Question: At any time in your analysis, did  
16 you read the answers that were filed by the defendants  
17 in this case?")

18 THE WITNESS: Is that the end of the  
19 question?

20 THE REPORTER: Yes.

21 A. In what forum were they filed?

22 Q. Did you read --

23 A. I mean, I read a lot of literature. Are you  
24 asking --

25 Q. You read the complaint in the case, correct?

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1 A. I read the complaint after I did my analysis.

2 Q. You read the complaint two months ago? Did  
3 you complete your analysis more than two months ago,  
4 Doctor?

5 A. My analysis is ongoing.

6 Q. So then that was an incorrect statement, you  
7 did not read the complaint after you completed your  
8 analysis?

9 A. The complaint -- you're using legal terms.  
10 In what documentation is the complaint contained?

11 Q. I asked you a while ago whether you read the  
12 complaint in this case and then you said that you had,  
13 that you had read it two months.

14 A. I read it some time ago, yes.

15 Q. You knew what I was talking about. You did  
16 not ask me at that time what the complaint was. Let me  
17 remind you, if you are confused about what I'm asking,  
18 then please ask for clarification of terms. You read  
19 the complaint two months ago. Now, you just said that  
20 you read the complaint after you had completed your  
21 analysis in this case. Is that an accurate statement?

22 A. No.

23 Q. Why did you say it?

24 A. Because I was not clear in the way you asked  
25 the question.

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1 Q. Did you read the answers which were filed to  
2 the complaint? Answers are the formal pleadings that  
3 are filed by every party who is accused by way of a  
4 complaint. Did you read what the tobacco companies had  
5 to say formally to the court in response to the  
6 allegations in the complaint?

7 A. What I'd ask you to do is to show me the  
8 document that you're referring to and I can refresh my  
9 memory. I've read thousands of documents over the last  
10 four or five months. Show me the document and I'll try  
11 to recall whether I read it and when I read it.

12 Q. The answer is you don't recall whether you've  
13 read the answers or not?

14 A. I'm asking you not to rely solely on my  
15 memory of one document of many. I'm asking you simply  
16 to show me the document you're referring to and I can  
17 probably make a better answer for you.

18 Q. Okay. Have you ever published any writings  
19 on smoking and health?

20 A. No.

21 Q. Have you ever, other than what you've done in  
22 connection with this case, have you ever written any  
23 articles or reports on smoking and health?

24 A. No.

25 Q. You have no medical education, do you, sir?

1 A. First aid.

2 Q. No medical training?

3 A. First aid.

4 Q. And that's all?

5 A. That's battlefield first aid and treatment of  
6 soldiers on the battlefield, I've done that.

7 Q. You do not present yourself as an expert in  
8 this litigation in the complexities of lung cancer, do  
9 you?

10 A. That's true.

11 Q. You do not present yourself as an expert in  
12 lymphoma or sarcoma or cell carcinoma?

13 A. That's true.

14 Q. And you have no formal training in any of  
15 those areas, do you?

16 A. Not in the medical context, no.

17 Q. All right. How about in epidemiology, do you  
18 have any formal training in it?

19 A. No.

20 Q. Do you know what relative risk is in the  
21 context of epidemiology?

22 A. No.

23 Q. Do you know what attributable risk is in the  
24 context of epidemiology?

25 A. No.

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1 Q. Have you read any epidemiological studies?

2 A. No.

3 Q. Have you read any medical studies relating to  
4 the onset of cancer?

5 A. I've read what's generally available from the  
6 surgeon general on the surgeon general reports. I  
7 assume they're based on medical facts or conclusions.

8 Q. Okay. Do you have any training in  
9 toxicology?

10 A. No.

11 Q. Do you have any training in pharmacology?

12 A. No.

13 Q. Any formal training? Do you hold yourself  
14 out to be an expert in toxicology?

15 A. No.

16 Q. None of the opinions that you're going to be  
17 giving in this case are based on your expertise in  
18 toxicology; is that correct?

19 A. That's correct.

20 Q. All right. And the same is true with respect  
21 to epidemiology; is that correct?

22 A. That's true.

23 Q. Are you an expert in psychiatry?

24 A. No.

25 Q. Do you have any degrees or advanced training

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1 in psychiatry?

2 A. Not in that particular field of --

3 Q. All right. Do you have any training or  
4 advanced degrees in child development?

5 A. I have a master of arts degree from the  
6 University of Oklahoma in human relations. That's a  
7 broad study of human development, human actions,  
8 societal relationships, et al. Courses in that course  
9 of study include what you just mentioned.

10 Q. Are you testifying here today as an expert in  
11 child development?

12 A. I never said that, no, I'm not.

13 Q. The answer is no.

14 Are you testifying as an expert in  
15 psychiatry?

16 A. No.

17 Q. Are you testifying as an expert in economics?

18 A. No.

19 Q. Are you testifying as an expert in legal  
20 ethics?

21 A. No.

22 Q. Are you testifying as an expert in the law?

23 A. No.

24 Q. Are you testifying as an expert in business  
25 ethics?

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1 A. No, not as an expert.

2 Q. Are you testifying as an expert in scientific  
3 research?

4 A. No.

5 Q. Are you testifying as an expert in lobbying?

6 A. Not as an expert.

7 Q. Are you testifying as an expert in  
8 manufacturing?

9 A. No.

10 Q. Are you testifying as an expert in design  
11 engineering?

12 A. No.

13 Q. Are you testifying as an expert in  
14 statistics?

15 A. No.

16 Q. Are you testifying as an expert in  
17 mathematics?

18 A. No.

19 Q. None of the testimony that you're giving will  
20 rely on those categories that I just -- let me rephrase  
21 it.

22 None of your testimony, none of your expert  
23 opinions relies on expertise in those topics that we've  
24 just gone through; is that correct?

25 A. Not based on expertise, but some familiarity.



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1 Q. Do you have expertise in advertising?

2 A. I have some familiarity in advertising. I  
3 don't know your definition --

4 Q. Have you published anything in advertising?

5 A. No.

6 Q. The study of advertising?

7 A. No. I personally don't consider publications  
8 as the only source of documentation of knowledge.

9 Q. Do you read the journals, the professional  
10 journals that study advertising?

11 A. Not professional journals.

12 Q. Do you read the texts, the textbooks that  
13 cover the topic of advertising?

14 A. Like any business major, I've read  
15 advertising and marketing textbooks, but that's going  
16 back into my college years.

17 Q. Have you ever written or published on  
18 consumer behavior?

19 A. No.

20 Q. Do you consider yourself an expert in  
21 consumer behavior?

22 A. Not as an expert.

23 Q. Do you have an expertise in the science of  
24 addiction?

25 A. Can you be more specific?

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1 Q. Have you had formal training in the analysis  
2 of addictive substances?

3 A. No.

4 Q. Have you had formal training in the  
5 categorization of substance as addictive?

6 A. No.

7 Q. Are you testifying in this case in any way as  
8 an expert in addiction?

9 A. No.

10 THE VIDEOGRAPHER: Counsel, you're kind of  
11 muffling your microphone there. If you can move it up  
12 a few inches on your tie, it would probably solve the  
13 problem.

14 MR. LERMAN: Thank you.

15 Q. Do you have any formal training in hospital  
16 administration?

17 A. No.

18 Q. In medical administration?

19 A. No.

20 Q. In public health administration?

21 A. My doctorate is in public administration, of  
22 which public health being a public institution, I have  
23 studied various courses on public health as an  
24 institute, but I don't hold myself as an expert in the  
25 public health industry.

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1 Q. Can you identify any of the journals or  
2 leading experts in public health administration?

3 A. No. As I said, I'm not an expert in that  
4 field.

5 Q. In your career, have you ever been  
6 responsible for marketing a consumer product?

7 A. Can you define a consumer product?

8 Q. Well, what do you think that means? What is  
9 a consumer product, Doctor?

10 A. If you want me to speculate, it could be  
11 anything from services to a physical object that you're  
12 trying to cause someone to acquire.

13 Q. Have you ever marketed a consumer product  
14 other than services?

15 A. I have been involved in attempting the  
16 Defense Department to prioritize and acquire military  
17 intelligence, hardware and software. I've been  
18 involved in marketing the products of this business.  
19 One of my jobs in this business is business  
20 development, business management.

21 Q. Have you ever been involved in marketing a  
22 consumer product, bubble gum, shampoo, soap?

23 A. Communications systems? Jamming systems?  
24 Software? Hardware? Yes.

25 Q. Okay. Have you ever conducted public

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1 relations on behalf of a company?

2 A. Yes.

3 Q. Who?

4 A. The United States government.

5 Q. That's the company?

6 A. That's one of the companies. I represented  
7 this company also.

8 Q. Have you ever worked for a manufacturing  
9 company?

10 A. The Department of Defense builds a lot of  
11 stuff so --

12 Q. Do you consider the Department of Defense a  
13 manufacturing company, Doctor?

14 A. Every time you see a tank on TV, it was  
15 produced, it was outsourced but produced through the  
16 manufacturing desires of the Department of Defense.

17 Q. Under oath in this deposition, what is your  
18 answer to the question: Do you consider the Department  
19 of Defense a manufacturing company?

20 A. Yes.

21 Q. What is the role of an expert in litigation?

22 A. To try to use that person's field of  
23 expertise to provide some clarity to one side or  
24 another to a case, I presume, and to provide it based  
25 on some reasonableness that the information is

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1 accurate, truthful and can be relied upon.

2 Q. So you view your role as trying to persuade a  
3 jury of a particular point of view?

4 A. I view my role in explaining to the jury, or  
5 whoever, what my analytical conclusions were, what did  
6 or did not correlate with regard to the data that I was  
7 provided -- the judgments that come out of that,  
8 obviously the jury will decide -- and to do that with  
9 some knowledge and expertise.

10 Q. Do you understand that your role as an expert  
11 is to provide fair and reliable opinions? Do you  
12 understand that?

13 A. It sounds reasonable.

14 Q. They have to be objective opinions; would you  
15 agree with that?

16 A. Hopefully. Hopefully they are objective  
17 opinions.

18 Q. They have to be independent opinions; would  
19 you agree with that?

20 A. To the extent that -- yes.

21 Q. Do you have any reservation about that?

22 A. Anything that passes through a human being is  
23 subject to certain amount of subject analysis and  
24 that's the reason as an analyst you've got to try to  
25 protect against going with early suppositions, going

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1 with assumptions and whatever. But basically your  
2 challenge is to remain objective in what you're trying  
3 to accomplish, and I think I've done that.

4 Q. Okay, and as an analyst, you're trying to get  
5 objective data; is that correct?

6 A. I'm trying to, first of all, I'm trying to  
7 get all data that I could get access to. I don't know  
8 when I go into the analysis how the data may or may not  
9 be skewed.

10 Q. You try to get objective?

11 A. I don't know how to say that a piece of paper  
12 with writing on it is or isn't objective until I go  
13 through it. I try to get lots of data.

14 Q. You try to get the full range of data; is  
15 that fair?

16 A. I try to get data, I try to get as much data  
17 as I can get access to in order to make my analytical  
18 conclusions.

19 Q. You try and review as much as you can in  
20 order to begin the analysis; is that right?

21 MR. HOHN: Brad --

22 Q. As much as is reasonable?

23 MR. HOHN: I'm going to have to ask that you  
24 let him finish his answer, because you're cutting him  
25 off and I just can't allow that.

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1 MR. LERMAN: Okay.

2 MR. HOHN: So if you could just wait just a  
3 little pause after he's finished before you start, I  
4 would appreciate that.

5 MR. LERMAN: Okay. I didn't mean to  
6 interrupt your question.

7 MR. LERMAN: That's okay, Doctor.

8 Q. Doctor, did I interrupt you? Is there an  
9 answer you needed to finish?

10 A. Would you reask the question.

11 Q. Let me ask you another question.

12 A. Okay.

13 Q. By objective information, what I mean is that  
14 you need to obtain information from all credible  
15 sources. Is that correct?

16 A. You would seek to do that.

17 Q. Okay. You would not want to just be  
18 reviewing information on one side of the question  
19 without looking at information on the other; is that  
20 correct?

21 A. Hopefully, you would be able to do that,  
22 yes.

23 Q. And that's what you'd want to do in order to  
24 be able to have a comfort level with what it is that  
25 you're looking at; isn't that right?

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1           A.    That's a reasonable assumption.

2           Q.    Because you don't want to get just  
3 information that is on one side of the issue if there's  
4 other information out there that you need to have;  
5 isn't that right?

6           A.    Yes.

7           Q.    And before you can reach an expert opinion,  
8 you need to know that you've seen the full body of  
9 information to the extent that it's available; is that  
10 correct?

11          A.    You can make judgment calls and analysis  
12 based on trends that begin to emerge whenever, whenever  
13 you get involved in your research. The only reason  
14 that I'm hesitant to give you a yes or no on this one  
15 is that the body of information to which an absolute  
16 perfectly objective analysis could be performed  
17 probably will never be available. As I said, one of  
18 the things I found interesting about the study of the  
19 tobacco industry is it has been a closed group where  
20 information was by design not to be released and was  
21 dealt with such that it would not be released, either  
22 for one reason or another. So --

23          Q.    But to the extent, Doctor, that it was  
24 released in the course of this litigation, through the  
25 discovery process, you would want to have access to



1 that; isn't that right?

2 A. I'd want to have access to that and every  
3 other data source that I could get my hands on to  
4 include, as we did, going through the Internet, looking  
5 for what was generally in the public domain to look  
6 at. I think I did that. Now, is that 1 percent of the  
7 total body or 90 percent of the total body of  
8 information that could have been released? I don't  
9 know.

10 Q. How many company documents did you review?

11 A. Company documents?

12 Q. Documents that come from the defendants did  
13 you review?

14 A. Thousands.

15 Q. How many?

16 A. Thousands.

17 Q. Hundred thousand?

18 A. Thousands. I didn't -- I don't have a coding  
19 system to number of documents, but I looked at  
20 thousands of documents.

21 Q. How many documents do you think were produced  
22 in this litigation?

23 A. Down in Texarkana, they have a warehouse full  
24 of boxes presumably filled with data that has come out  
25 during discovery.

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1 Q. And do you know, have you looked through  
2 those documents?

3 A. I've looked through some.

4 Q. Which ones?

5 A. I've looked through, I've taken, as I did my  
6 data search looking for various things that were  
7 important to my analysis, I looked at thousands.

8 Q. How did you get to those thousands? How were  
9 they selected?

10 A. Some of them were provided by the State of  
11 Texas; some of them, Texas took me down there and let  
12 me work in the room and look through other boxes; and I  
13 went on the Internet.

14 Q. Who selected those boxes?

15 A. I walked in the door, there's the boxes, so I  
16 guess I selected the boxes. I mean, there was no one  
17 there walking through and saying look at this, look at  
18 this, look at this. So I spent some time looking at  
19 the documents that were there trying to see how it was  
20 organized and how it might be useful.

21 Q. How many boxes were there in the room that  
22 they took you to?

23 A. Hundreds.

24 Q. How many boxes did you look through?

25 A. Probably -- I can't recall. I was in there

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1 for a while. I wasn't counting boxes. Some of the  
2 boxes were already opened. I didn't count boxes.

3 Q. How many days did you spend reviewing  
4 documents in Texarkana?

5 A. Part of one day.

6 Q. How many hours?

7 A. I can't recall. It was just one of those  
8 things, I flew in to look at the documentation. The  
9 purpose of the trip was not necessarily to a research  
10 trip, but to, although I availed myself to that, but to  
11 just get comfortable with the folks that were going to  
12 be trying the case.

13 Q. Of all the documents that have been produced  
14 in this litigation -- let me start the question over  
15 again.

16 How many hours have you spent reviewing --  
17 let me start the question over again.

18 How many trips have you made to Texarkana --

19 A. One.

20 Q. -- to review documents?

21 A. One.

22 Q. So some of the documents that you looked at,  
23 you received from the state?

24 A. True.

25 Q. What other materials did you look at?

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1           A.    I looked at internal memos and external  
2           memos, various publications of testimony or facts that  
3           are coming out from industry as a whole that I could  
4           find on the Internet of various types.

5           Q.    So to research internal and external memos,  
6           you went to the Internet?

7           A.    There's a lot of them out there.

8           Q.    There's a collection of documents on the  
9           Internet; is that right?

10          A.    There's documents that have come out through  
11          discovery, the Brown & Williamson documents as an  
12          example, that have come out that are readily available  
13          for folks to look at on the Internet. Now, whether  
14          they're the actual documents or excerpts or whatever,  
15          there's an assortment of those things. There are full  
16          testimonys available on the Internet or excerpts of  
17          testimonys.

18          Q.    What is your understanding of how the  
19          documents on the Internet were selected for being  
20          published on the Internet?

21          A.    Well, first of all, this is an industry that  
22          has been closed for a long time, so my -- I don't know  
23          that there was a pattern other than here was a document  
24          that is now available in the public domain, and there's  
25          a lot of folks that spent a lot of time putting that

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1 out or putting it up on the Internet to be accessed. .

2 Q. Isn't it a fact that groups opposed to the  
3 tobacco industries selected the documents that went up  
4 on the Internet? Isn't that the way it happened, sir?

5 A. The Internet documents included actual  
6 documents that came out of the Brown & Williamson  
7 discovery process. Now, I don't know that any one  
8 group or another filtered the information. I don't  
9 think they did. I think the documents are reasonably  
10 available for anybody to look at.

11 Q. Do you believe that the Internet documents  
12 represent a fair cross-section of all Brown &  
13 Williamson documents?

14 A. In some senses, they represent the actual  
15 documents, so no analysis has been applied. In other  
16 senses, some analysis have been applied with heavy  
17 extracts from them.

18 Q. Do you understand what I'm saying? What I'm  
19 saying is, there are only -- how many Brown &  
20 Williamson documents are on the Internet?

21 A. I don't know. I can't --

22 Q. How many did you read?

23 A. I read excerpts of maybe a hundred, two  
24 hundred. I think there's 13 hundred, 14 hundred, 15  
25 hundred that were revealed.

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1 Q. How many documents do you think bearing on  
2 the issue of smoking and health have been generated by  
3 Brown & Williamson since 1954?

4 A. I haven't a clue. I would say in the  
5 thousands.

6 Q. Would you say in the hundreds of thousands?

7 A. I said I don't have a clue. I know there's  
8 an abundance of documents.

9 Q. Would six million pages of documents sound  
10 like it might be right?

11 A. I wouldn't want to speculate. I would just  
12 say enterprises generate a lot of documentation and a  
13 broad variety of things they're involved in, and I'm  
14 sure the number is high.

15 Q. Have you even come close, sir, to reviewing  
16 the broad scope of documents that have been produced  
17 just by Brown & Williamson in this litigation?

18 A. I have looked at enough documentation to see  
19 a pattern of behavior that is irrefutable.

20 Q. My question to you is: Have you even come  
21 close to looking at the broad production of documents  
22 just from Brown & Williamson produced in this  
23 litigation?

24 A. I have taken sample looks at a lot of that  
25 documentation and I've read summaries of that

1 documentation.

2 Q. When did you take sample looks at a lot of  
3 that documentation?

4 A. I've been doing it over the last several  
5 months.

6 Q. When?

7 A. Over the last several months.

8 Q. How have you selected those documents?

9 A. I go on the net and I ask for, you know, you  
10 scroll under tobacco, you can scroll under Brown &  
11 Williamson or techniques similar to that, and documents  
12 can appear or excerpts of documents or analyses of  
13 documents.

14 Q. So your review of Brown & Williamson  
15 documents has been on the Internet?

16 A. No, I've got Brown & Williamson confidential  
17 documents, restricted, protected, proprietary documents  
18 sitting over there on that bookshelf that are original  
19 source documents.

20 Q. Who provided those to you?

21 A. Many of them came through the State of Texas.

22 Q. The State of Texas provided those to you?

23 A. Many of them.

24 Q. Which ones didn't they provide to you?

25 A. I have no idea.

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1 Q. You haven't selected any on your own, have  
2 you --

3 A. Yes, I have. I went --

4 Q. Not from the Internet, sir. From the  
5 production in Texas, have you selected any additional  
6 Brown & Williamson documents?

7 A. Well, Brown & Williamson, there's a large  
8 body of litigants here in which I tried to look at the  
9 body of evidence and see if they were acting as a  
10 single entity or as a series of seven or eight or nine  
11 or ten enterprises, separate enterprises. So to the  
12 extent that says this is a Philip Morris document, this  
13 is an RJR document, this is a Brown & Williamson  
14 document, this is a BAT document or whatever, I did not  
15 keep in my memory exactly how many documents of each of  
16 the sublitigants I was reviewing. Now, I think --

17 Q. What is a --

18 A. -- there's over a thousand documents that  
19 have come out from the Brown & Williamson disclosures.

20 Q. What are you calling the Brown & Williamson  
21 disclosures?

22 A. I'm talking about the documents that came out  
23 I believe it was in the mid-'90s that were provided to  
24 such researchers as Stanton Glantz. Congressman  
25 Waxman has also had some association with them. I



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1 looked at some of that analysis after I did mine to see  
2 what some of those documents were focused at. I also  
3 looked at those documents in relation to the primary  
4 source documents from Brown & Williamson that have come  
5 out that have not been either edited or preanalyzed.  
6 So I looked at an assortment of both.

7 Q. I'm trying to be clear now in what you're  
8 referring to. What are the documents that have not  
9 been edited or preanalyzed, which are those?

10 A. They're all around this room. There's an  
11 assortment of Brown & Williamson documents that have  
12 come out through various, either disclosure or on the  
13 Internet and others, available for analysis, selection  
14 and analysis. Many of them are here and I can go  
15 through some of them.

16 Q. And are those the ones that were provided to  
17 you by the state?

18 A. Some of the primary sources were provided by  
19 the state. What I did not do in my analysis is try to  
20 say that this document was provided by this source  
21 versus this one is this source. If it was what I  
22 considered a primary source, this is the memo that was  
23 in the file of a particular litigant in the case,  
24 Philip Morris, Brown & Williamson, et al., then I  
25 consider that a primary source document, and there are

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1 various ones of those there. Now, who provided it and  
2 what biases in culling out documents or whatever, I  
3 didn't use that in my analysis. Again, I tried to  
4 partition myself a little bit so I could keep my  
5 analysis objective.

6 Q. So in doing your analysis, the source of the  
7 document was not of importance to you?

8 A. The source of the documents with regard to  
9 what was on the title of the document, R.J. Reynolds,  
10 was important to me. I knew that various of the  
11 documents had come from Texas and I knew that various  
12 of the documents had been, had come out as a result of  
13 getting on the Internet and researching what I could  
14 find on my own. It was an assortment of the two that I  
15 based my analysis on.

16 Q. The trip that you described to Texas where  
17 you were in the room with the boxes, when was that?

18 A. Oh, not too long ago. A couple of weeks ago  
19 maybe. I've been traveling extensively, so I --

20 Q. That is the couple of weeks ago meaning when?

21 A. Meaning a couple of weeks --

22 Q. Can you give me a date? Today is the 27th.

23 A. I cannot give you a date off of my memory.  
24 It's recent, if you believe a couple of weeks ago is  
25 recent.

1 Q. I believe a couple of weeks ago is September  
2 13th. Is that approximately correct?

3 A. I'd have to get to my calendar to give you an  
4 exact date on what day I was there. This month I've  
5 done a certain amount of traveling, of which that was  
6 one of my multiple trips. So I don't -- I'm not trying  
7 to be combative. I just physically don't know from  
8 memory what the date was. It was recent.

9 Q. Was it before or after you executed the  
10 affidavit that was filed in this case?

11 A. I don't know when the affidavit was  
12 physically filed, so I don't know what that date would  
13 be.

14 Q. Well, do you know the date that you executed  
15 the affidavit? September 8th.

16 A. Okay, so it was -- the affidavit was prepared  
17 in draft and I looked at it in draft and I massaged it  
18 and worked it for a period of time. If September the  
19 8th is the date that's physically on it that I have  
20 finally locked down that affidavit, then fine. I think  
21 I traveled to Texas after that date.

22 Q. Okay.

23 A. I think. Again, I'm...

24 Q. So you traveled to Texas and were escorted  
25 into that room, your best recollection is, after the

1 affidavit was completed and signed?

2 A. Yes.

3 Q. In doing your analysis or rather in looking  
4 at information to do your analysis, did you conduct a  
5 systematic study of newspaper articles concerning  
6 smoking and health?

7 A. When I did my study, I tried to look at  
8 everything I could get access to. In some senses,  
9 newspaper articles were in that body of information  
10 that I looked at.

11 Q. What does that mean, "in some sense"?

12 A. There were some.

13 Q. Did you do a systematic review of newspaper  
14 articles concerning smoking and health?

15 A. To the extent that I could access the  
16 Internet and look at what newspapers or excerpts of  
17 newspapers were available, I looked at some of those.

18 Q. Did you look at anything called, did you look  
19 at the New York Times index, for instance?

20 A. No, not that particular index.

21 Q. Did you look at an index for the Wall Street  
22 Journal?

23 A. I looked at an index that called -- that  
24 asked -- I queried the system asking for data that was  
25 available in the Internet on tobacco. At various times

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1 during those sorts, various newspaper articles came up,  
2 New York Times, Washington Post, companies throughout  
3 the country that were commenting on it. If that's your  
4 definition of systematic look at one particular  
5 newspaper, I didn't do one particular newspaper look,  
6 but I looked at what publications are out there from  
7 the print media.

8 Q. If you wanted to find out what was generally  
9 being printed in newspapers across the country in the  
10 1950s regarding smoking and health, what would you do  
11 to find that out?

12 A. First of all, I'm not sure I'd want to do  
13 that from the 1950s, but I would probably have to find  
14 out where those papers are archived and access the  
15 archives, and hopefully they're on some sort of  
16 electronic transfer as opposed to not a physical going  
17 through dozens of papers.

18 Q. But that's something that you did not do?

19 A. As I said, I did not take a deliberate look  
20 of looking at only at the print media. I went into the  
21 Internet, various queries in the Internet looking for  
22 topical articles or documentation that was available on  
23 the Internet for, under the title of tobacco.

24 Q. Other than looking in the Internet, did you  
25 look anywhere else?

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1           A.    I looked everywhere I could get access to  
2           information.

3           Q.    Well, did you look to see what was being  
4           published in print media going back to 1954?

5           A.    If it were available on the Internet, I came  
6           across, as I've just mentioned, I did not look at a  
7           print media only research approach. I found the  
8           monumental amount of information on the Internet, a  
9           variety of newspapers, magazine articles, excerpts,  
10          professional journals, memoranda that are being  
11          published in exact print, photocopied and put on the  
12          Internet, so there's a plethora of stuff out there. I  
13          looked at all -- I looked at as much of it as I could.  
14          I did not partition in my mind, whether this, did you  
15          look at X number of articles that are from newspaper  
16          articles, that's the reason I'm having a difficult time  
17          with your question maybe.

18          Q.    Your answer is that with respect to what was  
19          being generally reported in the newspapers across the  
20          United States from 1954, let's say, until 1964, you did  
21          no specific study on that; is that correct?

22          A.    I did not and I probably would not. I wanted  
23          to see what was generally available in the print media,  
24          which I consider secondary source because it goes  
25          through a certain amount of editing and control by

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1 editors, but I didn't want to make that a root, one of  
2 the root foundations for my analysis. So I didn't go  
3 out of my way to say I'm going to spend a considerable  
4 amount of my time just looking at the  
5 published-for-profit print media. I didn't do that.  
6 But there's a lot of it out there as I surfed through  
7 the net looking at various other data sources and I  
8 came across articles to include some complete  
9 testimonials that are in various other cases.

10 Q. Have you looked at any Texas newspapers to  
11 see what was being reported in Texas regarding smoking  
12 and health?

13 A. I read the paper when I was in Texas, yes.  
14 There were a couple of articles in the paper.

15 Q. But other than reading the paper when you  
16 were in Texarkana on that one day, you have done no  
17 looking at Texas newspapers to see what they have been  
18 reporting on smoking and health?

19 A. I thought I was clear, I did not want to and  
20 I still would not want to take the approach of using  
21 open source newspaper articles as a huge body of data  
22 to which I would draw conclusions. I wanted to do -- I  
23 wanted certain exposure to that to see how various  
24 primary sources, of which I have many of them there,  
25 when they were reported in the press, whether the basic

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1 data was reported accurately or not. I found in many  
2 cases it was very accurate. But I just didn't want to  
3 go down the road of using newspaper clippings from  
4 around the country or even going into one company like  
5 the New York Times and go in and use that as a base, a  
6 very fundamental part of my analysis. I'd rather, I'd  
7 rather use primary sources.

8 Q. What are primary sources?

9 A. Primary sources to me as an analyst means  
10 that documentation that comes directly from, in this  
11 case, tobacco.

12 Q. And those, that's the body of documents that  
13 we've already talked about, is that right, the  
14 collection on the Internet and those original documents  
15 that came from the state?

16 A. That's the only -- it's what I could get  
17 access to, what's come out in discovery so far.

18 Q. The primary documents that you have read on  
19 the Internet and that you've gotten from the state is  
20 what you could get access to?

21 A. As primary documents you're talking about?

22 Q. Yes.

23 A. Fundamentally, yes.

24 Q. Did you ever look at the Readers Guide for  
25 Periodical Literature to find out what was being



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1 published in various journals and magazines regarding  
2 smoking and health?

3 A. If they're on the Internet, I may have, I may  
4 have, but --

5 Q. Did you make any effort at all to study what  
6 has been publicly reported about smoking and health  
7 since 1954, any effort at all?

8 A. Yes.

9 Q. What effort was that?

10 A. I used the data that was available in various  
11 print media, various primary sources as I just  
12 mentioned, to draw my conclusions. Now, documents come  
13 out at various times. My judgment is after looking at  
14 this that there's a deliberate effort on the part of  
15 tobacco to make sure documentation doesn't come out.  
16 So -- or that it trickles out or that it comes out at  
17 various times that's inconvenient. So I'm convinced I  
18 looked at a sufficient body of information to make an  
19 analytical conclusion, a lot of it primary sources, a  
20 lot of it with RJR and Liggett and Brown & Williamson,  
21 and BAT letterheads, confidential stamps all over it,  
22 stuff that obviously came out of their files through  
23 discovery, and I considered those primary sources and  
24 there are a lot of them.

25 Q. Thousands.

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1 A. Yes.

2 Q. Did you do anything to study what was being  
3 reported on television or radio since 1954 regarding  
4 smoking and health?

5 A. I've read some excerpts. I've exposed myself  
6 to what's been reported for the last X number of years  
7 on that.

8 Q. What does that mean, you've exposed yourself  
9 to it?

10 A. I've watched television. I mean, I know what  
11 Joe Camel looks like on television. I know what the  
12 Marlboro man looks like on television. I see the  
13 surgeon general standing up at news conferences giving  
14 findings. So I mean, that kind of public exposure is  
15 there.

16 Q. And is that kind of public exposure  
17 irrelevant to your analysis?

18 A. It's part of my experience.

19 Q. Is it relevant or irrelevant to what you've  
20 done?

21 A. It can be relevant.

22 Q. Okay.

23 A. I don't think that C. Everett Koop, you might  
24 say that the surgeon general's report, you might say  
25 would not represent the interests of tobacco. I am

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1 convinced that the way -- what he was saying about what  
2 the report concluded was accurate on TV.

3 Q. And you heard, you heard those conclusions?

4 A. I've heard a variety of news conferences by  
5 the surgeon general.

6 Q. And you were convinced that he was correct in  
7 his conclusions when C. Everett Koop made those  
8 conclusions, for example?

9 A. I'm convinced that he was accurately  
10 reporting on television what was contained in the  
11 surgeon general's report.

12 Q. And C. Everett Koop was the surgeon general  
13 during President Reagan's administration?

14 A. Whatever it was. A couple, 10 years ago,  
15 five years ago.

16 Q. Have you done any research into what was  
17 being taught in the state school systems regarding  
18 tobacco and health? State of Texas, I'm talking  
19 about.

20 A. The State of Texas, because I've done  
21 research on what the general population has been  
22 exposed to with regard to facts and fiction and slants.

23 Q. What research is that?

24 A. The documentation that I've looked at.

25 Q. Have you looked at what other information the

1 general public has been exposed to like newspaper  
2 articles?

3 A. Yes.

4 Q. Periodicals?

5 A. Yes.

6 Q. Those are the ones you found on the Internet,  
7 right?

8 A. Many on the Internet, yes.

9 Q. When --

10 A. I don't know if you've been on the Internet,  
11 but it's full of stuff like that. I've looked at to  
12 some degree Gallup polls, I've looked at various  
13 policies that have polls that have been conducted.  
14 I've tried to be as broad based as I could be.

15 Q. Did you study what was being taught in the  
16 schools in Texas regarding smoking and health?

17 A. I did not go into the public institutions or  
18 private institutions of Texas with a deliberate effort  
19 of trying to say what is, what are the students in  
20 these institutions being exposed to as a subset of the  
21 population. I did not do that.

22 Q. Have you studied what health class curricula  
23 have looked like in Texas over the last hundred years  
24 regarding smoking and health?

25 A. No.

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1 Q. Do you know how long schools in Texas have  
2 been teaching kids that smoking causes lung cancer?

3 A. No.

4 Q. Do you know how long schools in Texas have  
5 been teaching kids that smoking is addictive?

6 A. I know how long in Texas to which advertising  
7 that those students have been exposed to have been  
8 saying the opposite, that smoking is not addictive.

9 Q. You have seen ads that said that smoking is  
10 not addictive?

11 A. I have seen public testimony or published  
12 testimony and I've seen advertising that says that it's  
13 inconclusive.

14 Q. Let me ask my question again: Do you know  
15 how long public schools in Texas have been teaching  
16 kids that smoking is addictive?

17 A. No.

18 Q. You have no idea, do you?

19 A. No.

20 Q. Do you have any idea how long public schools  
21 in Texas have been teaching kids that nicotine is a  
22 drug?

23 A. No.

24 Q. You have no idea?

25 A. I just said no.

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1 Q. Why is that irrelevant to your analysis of  
2 the information that people are being exposed to?

3 A. Because there's an overwhelming body of  
4 evidence that that same population group is being told  
5 things in the public eye, articles in papers, articles  
6 in magazines, billboards next to high schools, print  
7 media advertising, video media, every media possible,  
8 that over the course of time, that cigarettes are not  
9 addictive, or it's inconclusive if they are, that they  
10 do not have a direct linkage to health disease, or it's  
11 inconclusive if they are, and that research is  
12 continuing.

13 Q. Describe for me the research that you've done  
14 into tobacco advertising.

15 A. The documentation that's been referred to  
16 here many times.

17 Q. How many ads have you reviewed?

18 A. How many different ads --

19 Q. Uh-huh.

20 A. -- that I've reviewed? Hundreds.

21 Q. In connection with this case, you've reviewed  
22 100 tobacco ads?

23 A. I've reviewed ads from every source I can get  
24 at. Now, ad, go over and look at that garbage can.  
25 There's an ad I looked at this morning and threw away.

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1 There's ads everywhere.

2 Q. Have you reviewed the advertising of the  
3 tobacco companies between the period of 1970 and 1980?

4 A. I've looked at their advertising from the  
5 primary documents that I've been able to get access  
6 to. I've looked at their advertising strategy. I've  
7 looked at their advertising goals and objectives as  
8 they articulate them inside the company versus the way  
9 they articulate them to the general public. I've  
10 looked at that extensively, yes.

11 Q. Have you ever studied a document called the  
12 Cigarette Advertising Code? Have you ever read that  
13 document?

14 A. I'd have to -- I know if this is the  
15 self-policing code of the tobacco industry that said  
16 that, to put aside any fears that you might have about  
17 regulation from outside the companies, we will regulate  
18 ourselves, if that's the code you're alluding to, I've  
19 looked at that.

20 Q. I wouldn't characterize anything I know in  
21 that way, sir, so I'm not sure if you've looked at what  
22 I'm referring to.

23 A. If you can show me the document that you're  
24 referring to, maybe we can --

25 Q. Have you reviewed -- I'm sorry I cut you

1 off. Finish, please.

2 A. No, that's fine. If -- I've looked at lots  
3 of documents. If you're going to go through this  
4 document this time with this title, if I could look at  
5 it, I could probably give you a more accurate answer.

6 Q. That might be if I can do that. If I can't  
7 give you a document, that worries you because you don't  
8 have that good of a command of the documents, Doctor?

9 A. No, you asked me how many documents I looked  
10 at. I said thousands. Now you're coming back saying  
11 cite one document with one title in the context of your  
12 question, and I'm saying I can give you a better answer  
13 if I review that document.

14 Q. How many advertising plans for the various  
15 companies since 1945 have you reviewed -- 1954, rather,  
16 have you reviewed?

17 A. I've reviewed 30, 40 documents of internal  
18 memos to which the advertising strategies, goals,  
19 objectives of the variety of industry members, to  
20 include the enterprise groups, to include things like  
21 the Plaza Hotel meeting in '54, going all the way  
22 through various other internal memoranda as they come  
23 out, that talked about advertising goals, strategies  
24 and objectives. I think a conservative number is 25 or  
25 30 documents.



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1 Q. How many advertising plans for the tobacco  
2 companies have you reviewed beginning from the time  
3 period 1954 going forward?

4 A. I just answered that question.

5 Q. 30 to 40?

6 A. 30 to 40 that I could get access to as  
7 principal sources. As I've said several times, this is  
8 a closed industry. The goals and objectives of this  
9 industry is not to let those things be available to  
10 me. So as they seep out, as they become available  
11 through various forums, Internet, Texas, whatever  
12 forum, I look at what I can look at. Now, I don't know  
13 if 30 or 40 is 100 percent of the plans that are  
14 available or 1 percent of the plans that are  
15 available. Excuse me.

16 Q. Is it your testimony that you are not able to  
17 look at the advertising plans for the tobacco  
18 companies?

19 A. I have looked at a sufficient number of  
20 various documents that include advertising goals,  
21 strategies, objectives and themes to draw a conclusion  
22 on what those themes were and what those goals were.

23 Q. Is it your testimony that you are not able to  
24 look at the advertising plans of the tobacco companies,  
25 that you don't have the ability to do that? Is that

1 your testimony?

2 A. I can look at anything that I can get access  
3 to.

4 Q. Is it your testimony that you cannot get  
5 access to --

6 A. I don't know what I can -- you're asking me  
7 about a specific internal company document with a title  
8 that says advertising plan. I'm responding that the  
9 subject of advertising and advertising strategy  
10 permeates many documents, internal memos. I've looked  
11 at those memos. If there's an industry series of plans  
12 with plan titles. I may have looked at some of those,  
13 I don't know.

14 Q. You don't know?

15 A. I do know that I've looked at a great deal of  
16 documentation internal to the industry regarding their  
17 strategy of advertising. I've said that three times.

18 Q. Do you think that in your -- let me  
19 rephrase.

20 Do you believe that a company like Philip  
21 Morris each year may draw up a plan for the marketing  
22 of one of its brands of cigarettes?

23 A. I'm convinced through what I've seen that  
24 there are multiple plans and strategies drawn up. I've  
25 with some interest seen plans that's going to be

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1 generally released, and there's stratagem and plans and  
2 goals that are retained internal to the companies.

3 Q. What does that mean, "generally released"?

4 A. Made available to the public.

5 Q. Philip draws up a marketing plan for one of  
6 its brands of cigarettes and makes it generally  
7 available to the public?

8 A. I'm telling you there's an advertising and  
9 public relations program with every one of these  
10 companies that says let's get out to the public our  
11 general brand type, the advantages of that brand. Now,  
12 the underpinnings of that is many times kept within the  
13 company and unfortunately -- fortunately, I've seen  
14 some of those, and others I haven't.

15 Q. To your knowledge, does Philip Morris produce  
16 a plan each year regarding the marketing of its  
17 cigarette brands, strategies, budgets, advertising, do  
18 they do that?

19 A. It would be reasonable that they would.

20 Q. Have you reviewed a single one of those?

21 A. I have looked at excerpts of many documents  
22 that allude to plans, strategies, goals, objectives.  
23 Whether the document I looked at had the title on it  
24 Philip Morris plan for 19XX, I can't recite that right  
25 now. I've looked at many, many, many advertising

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1 strategy documents.

2 Q. Isn't it a fact, Doctor, that you haven't  
3 looked at a single plan from Philip Morris on how it's  
4 going to market its cigarettes, not one?

5 A. That's incorrect. I just told you --

6 Q. Why don't you describe for me the document  
7 that you recall seeing regarding how Philip Morris is  
8 going to market a particular brand of cigarettes.

9 A. I just told you that I've looked at thousands  
10 of documents and I've looked of seven members of an  
11 enterprise in the tobacco industry. You're asking me  
12 to go into one of those seven, Philip Morris. You're  
13 asking me to go into one documentation category. I'm  
14 just asking that I not be asked to do that from  
15 memory. I've looked at extensive marketing,  
16 advertising goals and strategy, internal documents to  
17 the industry. Probably if you give me a chance, I  
18 could probably find some of those from Philip Morris  
19 that talked about their strategies and plans. I'm  
20 comfortable that I have a general understanding as to  
21 what it was.

22 Q. All right. And your assistant, Jane, is  
23 here; is that right? I'm sorry --

24 A. If we could take a break --

25 Q. -- I keep forgetting. Jane Ward is here, is

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1 that correct, she's in the room during the testimony?

2 A. Yes.

3 Q. Could you ask her, please, to go and find a  
4 Philip Morris marketing document that discusses how  
5 they are going to market one of their brands of  
6 cigarettes that you have reviewed?

7 A. If we ask the question that I keep answering,  
8 if the document title may not say advertising plan for  
9 19XX, there's documentation there that shows the  
10 advertising strategies of this industry.

11 Q. Do you think the plan each year that is  
12 designed by a company like Philip Morris to market its  
13 brands would discuss, for instance, its target  
14 audiences, its ads that it wants to run, the themes  
15 that it wants to run, the way in which it wants to  
16 market its products, do you think those things would be  
17 discussed in those documents?

18 A. Yes.

19 Q. You haven't reviewed a single one of those,  
20 have you, sir?

21 A. I'll answer the question for the fourth time.

22 Q. Okay.

23 A. I've reviewed documents that have had that  
24 kind of information on it. I can show you documents  
25 that talk about target audiences, strategies, themes,

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1 youth, pre youth, kids, I can show you extensive amount  
2 of documentation. What I didn't do in my codifying of  
3 the stuff is line it up by these are all the Philip  
4 Morris, these are all of the various other firms that  
5 are litigants here.

6 MR. HOHN: Before you answer that, are we  
7 going to take a lunch break?

8 THE WITNESS: I'm getting a little tired  
9 myself.

10 MR. LERMAN: Fine, let's take a lunch break.

11 THE VIDEOGRAPHER: Shall we go off the  
12 record?

13 MR. LERMAN: Yes.

14 THE VIDEOGRAPHER: The time 12:36, going off  
15 the record.

16 (Lunch recess at 12:36 p.m. to 1:24 p.m.)

17 THE VIDEOGRAPHER: Back on the record, the  
18 time is 1:24 p.m.

19 BY MR. LERMAN:

20 Q. Dr. Carter, did you undertake any study to  
21 determine what proportion of newspaper articles that  
22 have appeared on smoking and health since 1954 have  
23 been unfavorable to the tobacco industry?

24 A. I did not have as narrow a focused look at  
25 the data with regard to the way you just mentioned it.

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1 I did not go in and say what was the general public  
2 view. I've seen a number of documents over the course  
3 of the documents that I've been provided or have found  
4 that have talked about public perceptions, and some of  
5 those talked about trends, but I don't know that I -- I  
6 may have to refer to those documents to cite numbers  
7 and dates to you.

8 Q. Did you -- but in terms of analyzing what the  
9 media was saying about the tobacco companies since  
10 1954, have you done any systematic analysis of that  
11 whatsoever?

12 A. I've looked at what I would call open to the  
13 public, information on what's being said about the  
14 tobacco industry or what the tobacco industry has said  
15 in their opening statements about themselves, and in my  
16 course of the analysis, I compared that with what was  
17 said, information that was not to be released to the  
18 public. So my analysis and part of the procedures you  
19 go through in information operations is pretty much to  
20 say what is being said that you know is truthful, that  
21 is, what is being said internal to the enterprise  
22 versus what's being put out. As a part of that  
23 process, I did look at the kind of public information  
24 they were putting out.

25 Q. Okay. I'm talking about, again, Doctor, I

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1 appreciate that you need to give full answers, but I'm  
2 going to ask you to be a little bit more focused on the  
3 question and the question is: Did you perform an  
4 analysis regarding the proportion of favorable versus  
5 unfavorable media that came out from 1954 through the  
6 present on the tobacco industry, and I'm talking about  
7 newspapers, periodicals, television, radio, all  
8 publicly available information; have you done that kind  
9 of analysis?

10 A. I've done an analysis on the general  
11 information campaign that's been put out by tobacco or  
12 by the advertising industries.

13 Q. Okay.

14 A. That includes --

15 Q. Doctor --

16 A. -- trends and statements --

17 Q. I am going to interrupt you because I think  
18 I'm entitled to have you answer the question I'm  
19 asking, and the question that I'm asking is not  
20 anything other than to ask you to respond to whether or  
21 not you have performed an analysis to determine the  
22 percentage of unfavorable versus favorable media on the  
23 issue of smoking and health from 1954 to the present.

24 A. Not as a major category of separate analysis,  
25 nor would I.



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1 Q. Not as a major category of separate analysis?

2 A. Right.

3 Q. Is that a yes or a no?

4 A. Well, I don't know how you call -- my  
5 analysis as in my statement was on the subject of  
6 perceptions and general information. It embodied a lot  
7 of subpieces or elements, subelements to which --

8 Q. Isn't --

9 A. -- public media campaign was one.

10 Q. Not a public media campaign by the companies,  
11 I'm talking about the actual articles, stories, reports  
12 and publications that are in the public domain, not  
13 printed by the tobacco companies. Have you analyzed  
14 those in a systematic fashion from 1954 to the present  
15 to find out what those things were saying to the  
16 American people?

17 A. I have read extensive information that's come  
18 out from advertising programs targeted at the general  
19 population and generally what those things are saying.  
20 Now, if you're going to say what statistic on what date  
21 reflecting -- I'm not into remembering numbers kind  
22 of. I'm looking for general patterns of behavior and  
23 general conclusions.

24 Q. Okay. Doctor, have you reviewed in a  
25 systematic fashion the press reports that appeared on

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1 smoking and health in the 1950s? Yes or no.

2 A. It's not a yes or no. I've looked at a lot  
3 of documents that dealt with public information on that  
4 subject.

5 Q. Have you reviewed, have you attempted to  
6 review the articles, publications, television programs  
7 and radio programs that came out in the 1950s on  
8 smoking and health? Yes or no.

9 A. A lot of that information was available to me  
10 and I looked at it. So if that's a yes, yes.

11 Q. What did you do --

12 A. I don't know your definition of a systematic,  
13 analytical, focused look at one small dimension of  
14 information operation. I'm not sure where that's --

15 Q. Do you have any idea, for instance, the  
16 number of articles or the rate at which they were  
17 coming out on smoking and health in 1954?

18 A. 1954 was roughly when some of the articles,  
19 negative articles started to come out. So I suspect --

20 Q. How many came out?

21 A. You want a number? I can't recite you a  
22 number. Lots.

23 Q. Did you do anything to collect those articles  
24 and review them?

25 A. I've looked at various articles over that

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1 period of time.

2 Q. Which ones?

3 A. I can get up and -- I don't have a codified  
4 listing of which ones. Which ones as in which were  
5 public and which particular periodicals or what? What  
6 do you mean by which ones? I don't want to be  
7 argumentative, I just don't know where you're -- I know  
8 how I did my analysis. It had many, many legs and  
9 tentacles that I pursued.

10 Q. Okay. I'm asking you if one of those  
11 tentacles was an independent review of the press, the  
12 media with respect to smoking and health in the 1950s.

13 A. I've looked at a number of documents over  
14 that period, and it was that, the documents and what  
15 they said were embodied in my general analysis.

16 Q. Did you analyze the media, the stories, the  
17 frequency of stories and whether they were favorable or  
18 unfavorable to the tobacco industry for the 1960s?

19 A. I looked --

20 Q. Yes or no.

21 A. As a part of my analysis, yes. As a part.

22 Q. What did you do to do that?

23 A. I went and found what I could find in the  
24 public forums that we've talked about in the --

25 Q. On the Internet?

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1           A.    And other places to go search for  
2   documentation that could tell me evidence about that.

3           Q.    What other places did you look at in order to  
4   document the articles and media reports that were  
5   coming out on smoking and health in the 1960s?

6           A.    What other -- say the question again, I'm  
7   sorry.

8           MR. LERMAN: Can you repeat the question,  
9   please.

10                (Reporter read record as requested.)

11           A.    First of all, I can provide you a  
12   bibliography of sources and whatever if that's helpful  
13   for you, it's interesting to you, but when I looked at  
14   documentation, I didn't in each and every case look at  
15   sources for where it came. I had an exposure to an  
16   assortment of press and other documentation that talked  
17   about one side of the issue or the other. I did not do  
18   a deliberate count of how many documents, how many  
19   documents over which decade and whether it was 49 or 51  
20   or one side. I looked for general trends.

21           Q.    What do you mean by you can provide a  
22   bibliography. A bibliography of what?

23           A.    I can provide you, I can provide you a  
24   listing of all documents that I looked at in each  
25   category that you choose to do that if you feel that's

1 important and if you're willing to do whatever my  
2 company feels you need to do to get access to my time  
3 to do that.

4 Q. You don't have such a bibliography in  
5 existence right now?

6 A. Not categorized by every category of analysis  
7 I looked at. I don't have it cross-referenced by every  
8 category. I generally have it cross-referenced by  
9 dates and so in those dates, they cut across many, many  
10 subdimensions of the subject.

11 Q. Is it fair to say that whatever analysis you  
12 would have done regarding the media as I've described  
13 it would have been done based on the documents that  
14 you've received from the state or retrieved from the  
15 Internet that we were discussing earlier in the  
16 deposition?

17 A. Generally.

18 Q. Have you looked, have you done any research  
19 with respect to the legislative history of proposed  
20 legislation regulating tobacco?

21 A. I've looked at a bunch of the literature  
22 that's been out, discussed the needs for additional  
23 regulation or which regulation is going to be enacted,  
24 but I have not done a focused look at lit -- excuse me,  
25 legislation as a separate thing. It's -- the

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1 discussion of regulation and oversight permeates a lot  
2 of the documents that I did look at.

3 Q. What was the legal smoking age in Texas in  
4 1985?

5 A. Right now, the legal smoking age is 18. I  
6 have no reason to believe it was less than that.

7 Q. So in 1985, you have no reason to believe it  
8 was less than that?

9 A. Smoking age in Texas is 18 today. I know  
10 that.

11 Q. Okay. What was the smoking age in Texas in  
12 1975, legal smoking age?

13 A. I'm not sure exactly when they established a  
14 legal reg. I know that there's -- or a legal age. I  
15 know that today it's 18, but the self-code,  
16 self-policing code talks about 21.

17 Q. Have you --

18 A. The legal code talks about 18.

19 Q. Have you undertaken any library research,  
20 Internet research or any other kind of research to  
21 analyze what legislative proposals have been considered  
22 by the Texas legislature regarding the regulation of  
23 tobacco?

24 A. Not as a separate body of research.

25 Q. Have you done it at all?

1           A.    I just said, not as a separate body of  
2    research. The information on regulation has come up in  
3    the general documentation I've looked at. I have not  
4    taken on a separate study to go look at the history of  
5    legislation in the State of Texas, no.

6           Q.    So if it's in the body of documents you've  
7    looked at it and it concerns legislation, you've  
8    analyzed it?

9           A.    I've looked at it as a part of all the other  
10   things I've looked at, yes.

11          Q.    If, for instance, there's a bill brought up  
12   in the Texas legislature in 1991 regarding taxation of  
13   cigarettes and there was a debate regarding that, you  
14   have not gone to look at that; is that correct?

15          A.    I don't know. If you're asking for a  
16   specific document, I'd have to refer to my notes or  
17   my --

18          Q.    How many times did the Texas legislature  
19   raise the tax on a pack of cigarettes in the last 30  
20   years?

21          A.    I have no idea.

22          Q.    What were the nature of the debates in the  
23   legislature concerning the raising of the cigarette  
24   tax?

25          A.    I can speak to it generally.

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1 Q. On what basis can you speak to it?

2 A. On the literature, from what's come out in  
3 the body of knowledge that I have, based on what I've  
4 looked at or been allowed to look at.

5 Q. Have you looked at actual legislative records  
6 that record the statements made by members of the Texas  
7 legislature regarding that kind of legislation?

8 A. I've looked at documents that come out  
9 internal to tobacco and other open source documents  
10 which has commented on that legislation. I have not  
11 gone to any state agency and asked to see a legal  
12 document and review it in its original context.

13 Q. So is it fair to say that you have done no  
14 research with respect to going to legislative records  
15 and tracing the history of legislative proposals for  
16 tobacco in the State of Texas?

17 A. I wouldn't do that. I wouldn't find it  
18 relevant to my approach.

19 Q. Would you find it relevant to your approach  
20 if the legislature debated the issues of smoking and  
21 health, addictiveness, causation, and all the other,  
22 advertising regulation, would that be of relevance to  
23 your analysis?

24 A. The information is very relevant to the  
25 analysis, but you asked a very specific question: Did



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1 I go and try to get the regional documentation that  
2 came out of the legislature. I didn't do that.  
3 There's documentation in this body of evidence that I  
4 did look at that refers to it.

5 Q. Does any of the documentation that is in that  
6 body of evidence include actual records of floor  
7 debates or records regarding the amending of  
8 legislation, the proposing of legislation that comes  
9 from the Texas legislature?

10 A. I would have to go back and look at the  
11 index. I don't --

12 Q. Do you recall any?

13 A. I did not in my approach feel the need to  
14 codify and record and categorize by the specific  
15 legislature. I looked at it from the standpoint of the  
16 information that was coming out of that legislative  
17 discussion and its impact, pro or con, on tobacco and  
18 the state.

19 Q. You mentioned an index. What is that index?

20 A. Just the general listing of all the  
21 documentation I've looked at.

22 Q. Do you have such an index in existence?

23 A. I don't have it on a single page. I have the  
24 actual documents. Now, I have some of the documents  
25 here, but the big body, there's a body of documents

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1 that are still down in Texas. Many of them we looked  
2 at down there that I just didn't haul up here.

3 Q. Do you have an index of the literature that  
4 you have reviewed to date?

5 A. I don't have a single page or a single  
6 bibliography.

7 Q. What do you have?

8 A. I have the documents: some of them here, some  
9 of them in Texas.

10 Q. Well, you just testified that you'd have to  
11 go look at an index to see if you had seen some  
12 legislative documents. What were you referring to?

13 A. I have some reviews as provided in the expert  
14 testimony, I have some codification of what I looked at  
15 as representatives, and that's been provided to you, I  
16 presume.

17 Q. Okay.

18 A. There's other documentation that represents  
19 summaries of documents and categories. Some of it is  
20 here and some of it is down in Texas. As I said, we're  
21 talking about a warehouse full of data. We didn't want  
22 it haul it all up here.

23 Q. Have you done any research to find out what  
24 the Texas Department of Health has been publishing and  
25 advising the public regarding smoking and health?

1 A. Only generally.

2 Q. And what's the basis of that general  
3 knowledge?

4 A. The same data source that I want to go back  
5 to every time you ask the same question, the body of  
6 evidence that I've been allowed to look for.

7 Q. So in other words, you have not gone to the  
8 State of Texas or to libraries in Texas to collect that  
9 body of information?

10 A. No.

11 Q. You've not gone to libraries in Texas or to  
12 the legislature in Texas or other government entities  
13 in Texas to collect information on legislation; is that  
14 right?

15 A. That's correct.

16 Q. You have not engaged in any collection of  
17 research regarding smoking and health, and by that I  
18 mean the research reports that would have been  
19 referenced in the surgeon general reports. Let me  
20 rephrase the question.

21 A. Uh-huh.

22 Q. How many surgeon general reports have you  
23 reviewed?

24 A. I've reviewed excerpts of most of them.

25 Q. How many of them, how many of them are there?

1           A.    I have no idea by number.  There's some key  
2           ones, the '64 one being key, and there are general  
3           reports that come out periodically, so there's multiple  
4           of them, multiple reports, multiple ones.  Now, there's  
5           many surgeon general reports that don't have anything  
6           to do with tobacco or tobacco-related issues.

7           Q.    How often does a surgeon general report come  
8           out that concerns smoking and health?

9           A.    I have no idea.  But when they do come out, I  
10          try to get access to the actual documents or excerpts  
11          of those documents.  I'm not here to testify on the  
12          workings of the surgeon general's office.

13          Q.    What do you do to get access to the surgeon  
14          general reports?  When you say you try to, what do you  
15          do?

16          A.    Well, many of them are on the Internet.

17          Q.    If they're not on the Internet, what do you  
18          do?

19          A.    I can ask for them.

20          Q.    Who do you ask?

21          A.    I can ask my admin assistant to see if  
22          they're reasonably available.

23          Q.    How many have you asked for in that manner?

24          A.    Oh, four or five.

25          Q.    Which ones?

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1           A.    The '64 one in particular.

2           Q.    Any others?

3           A.    Any others that -- as I research the reports  
4 looking for tobacco, I've asked that she go into those  
5 reports and see if those that talked about tobacco and  
6 provide them for me. Again, some of the reports talk  
7 about every other subject from health nature other than  
8 tobacco and they're not relevant to this case.

9           Q.    I understand that. Of the ones that deal  
10 with smoking and health, how many have you reviewed?

11          A.    All of them that I could get access to.

12          Q.    How many? What would be preventing you from  
13 getting access to a surgeon general report on smoking  
14 and health?

15          A.    Nothing.

16          Q.    So why do you respond "all that I could get  
17 access to" as though somebody's got a hidden stock of  
18 surgeon general reports that you couldn't get?

19          A.    I didn't mean to be defensive.

20          Q.    Okay.

21          A.    I can get access to any one I want. The ones  
22 I've read, there's a general trend of knowledge, of  
23 findings and conclusions that are in there.

24          Q.    In the ones that you've read, approximately  
25 how many research reports, publications, are referenced

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1 in these surgeon general reports?

2 A. I would have no idea. I did not keep a  
3 numerical count of every bibliography of every document  
4 I read, nor would I find it necessary. If you're  
5 asking me what did the surgeon general base his  
6 findings on, I did not go in and try to reresearch that  
7 original source data to see if I'd come up with  
8 different conclusions.

9 Q. Let me ask you this: In 1964, did the  
10 surgeon general find that smoking was a cause of lung  
11 cancer?

12 A. In '64 is when some of the early materials  
13 start to come out that indicated there was linkage  
14 between smoking and health-associated problems.

15 Q. Doctor, I think that's a useful answer, but I  
16 really want to impose a discipline on what we're going  
17 to do here today. My question to you is: In 1964, did  
18 the surgeon general find that smoking was a cause of  
19 lung cancer?

20 A. I did not look at the material with regard to  
21 the five or six or eight or ten diseases that there's  
22 linkage associated to, so I can't say the answer was  
23 cancer, but I believe it was. It was health-related,  
24 whether it's emphysema, whether it's lung cancer,  
25 whether it's any of the other of the various diseases.

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1 Q. Let me try this question one more time.

2 In 1964, did the surgeon general find that  
3 smoking caused lung cancer?

4 A. You've asked the same question three times.  
5 I've got the document over there. I can refresh my  
6 memory on it. I know that that particular report was a  
7 landmark report that put the surgeon general on record  
8 very declaratively there was linkage between smoking  
9 and health-related diseases. It would be reasonable to  
10 assume that cancer was one of the things that he listed  
11 in that report or referred to in that report. But as I  
12 recall the report, it talked about linkage between  
13 health and smoking. So I apologize if cancer is one of  
14 the diseases in question, you know, I didn't keep that  
15 information in my head. I can find that.

16 Q. To your knowledge, did the surgeon general  
17 find that smoking caused one of those diseases, whether  
18 it was cancer or emphysema or whatever, in 1964?

19 A. I can only repeat the answer I gave you  
20 before. My general understanding of that particular  
21 report was that they were willing to, the surgeon  
22 general was willing to say that there was a linkage  
23 between smoking and health disease of which probably  
24 cancer was listed on his list, but I'd have to refer to  
25 it then.

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1 Q. Is your answer then, in 1964, the surgeon  
2 general did not find that smoking caused cancer?

3 A. I said that I think the verbiage in the  
4 report, and I'm willing to go reread the report if  
5 you're going to tie me to a word in a report, the  
6 verbiage in the report generally said there is a  
7 causative relationship between smoking and health  
8 disease.

9 Q. Do you understand what I mean when I use the  
10 word cause?

11 A. There's a linkage.

12 Q. That's the way you define it, a linkage?

13 A. That's the working, that's the nonlegal,  
14 maybe, working linkage that I as an analyst attach to  
15 that, yes.

16 Q. Is it a matter that you view as not being  
17 important to study, finding out what the surgeon  
18 general's view was on causation in 1964? Is that  
19 something that you didn't feel was important for  
20 purposes of your analysis?

21 A. For the purposes of my analysis, I was  
22 looking for information and information linkage and  
23 correlation.

24 Q. Did the surgeon general find in 1964 that  
25 smoking cigarettes smoking was addictive?



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1           A.    I think that was the report or one of the  
2 later reports that said there is an addictive  
3 relationship between smoking. Smoking is habitual or  
4 addictive. It was either that one or one of the ones  
5 later in the '60s. Again, I'd refer to my notes or to  
6 my documents to say which document, which document,  
7 which report concluded what precise statement.

8           Q.    On September 20th, we received your expert  
9 disclosure.

10          A.    Right.

11          Q.    In your expert disclosure, you make a number  
12 of opinions and findings.

13          A.    Right.

14          Q.    One week later we're taking your deposition.

15          A.    Right.

16          Q.    I'm asking you if you know as you sit here  
17 today whether the 1964 surgeon general's report  
18 concludes that smoking is addictive; does it or doesn't  
19 it?

20          A.    And I'm answering you again, that if it's  
21 that important to be very precise on which report on  
22 which date that I used in my affidavit, please give me  
23 the liberty to refer to my note and I'll try to do --

24          Q.    So as you sit here right now, you're not  
25 sure; is that your testimony? Without looking at a

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1 document, you are not sure?

2 A. I am not going to sit here over an eight-hour  
3 and quote dates, names, titles and sources  
4 authoritatively from memory. Now, that was a landmark  
5 report, it has -- that's probably the report that  
6 talked about linkage between addiction and cancer. I  
7 would ask that you allow me to look at my reference  
8 material, rereview the report before I say it on the  
9 record that it was that exact report and that exact  
10 language. That's all I'm asking.

11 Q. Doctor, I think it's relevant for us to have  
12 this conversation to find out what it is that you have  
13 as a working body of knowledge regarding smoking and  
14 health, and that's why I'm asking these questions.  
15 Now --

16 A. I don't think that you understand what an  
17 analyst goes through in looking at an extraordinarily  
18 large body of information, if you come back and ask  
19 specific questions on what person, what company, what  
20 date, what time, and then be dismayed that the analyst  
21 can't recite that, because there's thousands and  
22 thousands of questions that might have that data, that  
23 kind of specificity. That's all I'm trying to --

24 Q. Doctor, I'm neither dismayed nor surprised,  
25 I'm just asking the question.

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1 In what year was cigarette advertising banned  
2 from television?

3 A. Generally in the '60s.

4 Q. In what year did the FTC begin regulating  
5 control -- let me rephrase it.

6 In what year did the FTC, the Federal Trade  
7 Commission, begin exercising review of cigarette  
8 advertising?

9 A. I don't know.

10 Q. Do you know that the FTC does review  
11 cigarette advertising?

12 A. I would not be dismayed if they did.

13 Q. Do you know?

14 A. I know that they're one of the companies that  
15 review advertising, yes. I don't know if they're the  
16 principal regulators or reviewers.

17 Q. How long have they been regulating or  
18 reviewing advertising?

19 A. I have no idea.

20 Q. How many times has the FTC taken action with  
21 respect to cigarette advertising?

22 A. I don't have a number in my head.

23 Q. Give me an approximation.

24 A. I don't want to give an approximation, if  
25 it's a guess, because --

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1 Q. It would simply be a guess?

2 A. I did not sit down and make column listings  
3 of how many of what things happened on what dates. We  
4 went through that earlier and that's going to be my  
5 answer to questions throughout this line of questioning  
6 if you say I want to know the date, the number, the  
7 time, the company.

8 Q. What other government agencies have  
9 jurisdiction over cigarette advertising?

10 A. The FDA is one organization that is  
11 attempting to gain stronger control over cigarette  
12 advertising, cigarette industry as an industry and  
13 therefore its advertising. Congress is obviously  
14 looking at truth in advertising and any laws that they  
15 may be interested in. American Cancer Society is  
16 interested in the consequences of truthful or  
17 untruthful advertising. Those are the ones that come  
18 off the top of my head. Again, I'm not an authority on  
19 regulation.

20 Q. How many agencies in Texas are concerned with  
21 or have responsibilities for -- let me rephrase it.

22 How many state agencies in Texas,  
23 approximately, have responsibilities for smoking and  
24 health?

25 A. I have no idea.

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1 Q. Can you name three of them?

2 A. I have no idea.

3 Q. Can you name any official in the State of  
4 Texas who has had responsibility for smoking and  
5 health?

6 A. No. I would name the attorney general. He  
7 seems to be responsible for everything related to the  
8 health and welfare of the citizens. So if he's an  
9 official that you want me to name, I guess I'll name  
10 the attorney general.

11 Q. Well, I don't want you to name anybody. I  
12 want you to answer to the best of your ability. What  
13 public health officials are there in Texas who have  
14 responsibility for smoking and health?

15 A. I don't know because it has nothing to do  
16 with my analysis, to come up with names and dates.

17 Q. What information does the State of Texas  
18 supply its Medicaid recipients on issues of smoking and  
19 health?

20 A. I didn't find researching or committing that  
21 to memory helpful to my analysis.

22 Q. Did you research it?

23 A. I don't know. I may have. I'm not going to  
24 sit here and recall off the top of my head specifics in  
25 this area.

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1 Q. I'm not asking for specifics. I'm asking,  
2 did you research what the State of Texas communicates  
3 through various agencies to Medicaid recipients  
4 regarding smoking and health?

5 A. No. As a separate area to go and look at  
6 that subdiscipline, I did not.

7 Q. As any area, whether it's separate or not,  
8 did you do any research into that area?

9 A. No.

10 Q. Did you do any research into the area -- let  
11 me rephrase.

12 Do you know how many internal tobacco company  
13 documents have been made available to the State of  
14 Texas in this litigation?

15 A. Hundreds, thousands, it's a large number, but  
16 I don't have a number in my head. Thousands would not  
17 surprise me.

18 Q. Thousands would not surprise you?

19 A. Right.

20 Q. Do you know how many internal tobacco company  
21 research reports have been made available to the State  
22 of Texas in this litigation?

23 A. Many.

24 Q. Do you have any idea, and I'm not asking you  
25 to guess, do you have any idea of the --

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1           A.    If you're not asking me to guess, to  
2           estimate, I'll answer I don't know because I don't have  
3           a discrete number, I didn't count them, but I suspect  
4           of what I have seen, there are a number of research  
5           reports or literature or correspondence, memorandum  
6           that refer to research. That is out in abundance.  
7           Now, whether the number is 50 or 60 or 200 or 300,  
8           that's what I don't want to speculate on. It is a --  
9           certainly it's a body of information that is out  
10          there.

11          Q.    Okay. Do you know how many scientists work  
12          for any one of the tobacco companies in particular or  
13          for all of them put together? Have you studied that?

14          A.    I have not done a head count of the number of  
15          scientists that work for the tobacco industry.

16          Q.    Have you studied the topic at all, the  
17          staffing of research scientists at the defendant  
18          companies? Have you done that?

19          A.    I have looked at a lot of this discussion in  
20          the literature, I have looked at documents that have  
21          talked about research staffs. Now, I have not gone in  
22          as part of my analysis, nor would I, and tried to come  
23          up with staffing issues.

24          Q.    Do you know how much --

25          A.    I assume they're all competent, capable, well

1 motivated, well compensated folks.

2 Q. Okay. You assume that the research staffs of  
3 the companies are composed of competent, well  
4 qualified --

5 A. I assumed that that's a basis for their  
6 hiring. That's a standard for their hiring.

7 Q. Now, do you know, for example, who heads  
8 research at any one of the defendant companies, do you  
9 know a name?

10 A. No.

11 Q. Do you know what the budgets are for research  
12 at any one of the companies who are defendants in this  
13 case?

14 A. No.

15 Q. Do you know what kind of research goes on at  
16 these companies?

17 A. Tobacco research associated with either  
18 trying to establish a linkage or not establish a  
19 linkage would be logical.

20 Q. Is that a guess?

21 A. That seems to come out in the literature that  
22 that's what they're doing.

23 Q. Is that your expert opinion, is that your  
24 opinion based on what you've done?

25 A. There is research being done by the tobacco



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1 industry, internal to the tobacco industry on the  
2 subject of tobacco and ill effects. There's research  
3 being done associated with advertising strategies,  
4 packaging and target audiences and what themes work.  
5 There's research done in terms of expansion of the  
6 business as a business enterprise. I mean, so there's  
7 that kind of -- I don't want to go on. There's that  
8 kind of data out there on research.

9 Q. How many research reports of that kind has  
10 the tobacco companies generated since 1954, do you have  
11 any idea?

12 A. This is a very closed organization. I would  
13 have no idea whether I have -- of the discovery so far,  
14 none that's been destroyed, none that's been shipped  
15 offshore, none that's been hidden from litigation or  
16 discovery, that body is probably, is not in the body of  
17 information that's generally available to me. I don't  
18 know if that's -- I don't know what percent that  
19 represents of what could be there. I don't know.  
20 Therefore, the research associated with that, I don't  
21 know.

22 Q. What is your basis for making the allegation  
23 that documents have been hidden, destroyed or shipped  
24 offshore?

25 A. Primary source documents that have come out,

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1 directly from the tobacco industries themselves.

2 Q. Do you have one in mind?

3 A. I've got several referenced in my expert  
4 statements.

5 Q. Okay, and we'll go through that.

6 A. Okay.

7 Q. Are those the ones you have in mind?

8 A. Those are representative of the ones. Now,  
9 the ones in the statement are very representative.  
10 They're the tip of the iceberg of what's there in many  
11 of these areas, but, you know, what's listed on the  
12 statement is not the body of evidence. There are other  
13 documents.

14 Q. Other than this suspected class of documents  
15 that have been hidden, destroyed or shipped offshore,  
16 how many research reports of the kind that you have  
17 referred to have you reviewed from the tobacco  
18 companies?

19 A. If you're talking about reports that allude  
20 to research, the conclusions or direction or focus  
21 probably of research, well over a hundred. There's  
22 lots of them out there.

23 Q. How many reports have you read?

24 A. I just answered that question.

25 Q. You told me how many documents allude or

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1 refer to research. I want to know how many research,  
2 actual research reports you have read?

3 A. Well, I've read every one that's listed in  
4 the statements that I provided. Now, is there a number  
5 you're looking for?

6 Q. I'm looking for an approximation. A dozen,  
7 fifty, two? You tell me.

8 A. Over a dozen.

9 Q. Do you know what percentage of all the  
10 research reports that have been generated by the  
11 companies a dozen represents?

12 A. As I just mentioned, this is a closed  
13 enterprise. No one except those internal to the  
14 company knows what constitutes the entire body of  
15 information or the universe of information that's been  
16 generated over the 40 or 45 years.

17 Q. When you say it's a closed industry or closed  
18 company, do you mean that these kinds of documents,  
19 research reports, marketing reports, these are the  
20 kinds of documents that the public does not have access  
21 to?

22 A. Right.

23 Q. Do you also mean that these are the kinds of  
24 documents that you would not have access to?

25 A. I would not normally have access to them.

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1 Q. Do you have access to them?

2 A. I have access to many of them through  
3 discovery and through the fact that they've been put on  
4 the Internet and I've gotten them indirectly through  
5 the Internet, but I would otherwise not see these  
6 documents because they're closed.

7 Q. When you say through discovery, what do you  
8 mean?

9 A. Provided by the State of Texas basically.

10 Q. Now, when you would take a look at a memo and  
11 it would say -- let me start over again.

12 When you reviewed the document that you did  
13 review, did you ask to see whether there were a series  
14 of documents that led up to the generation of that  
15 document or a series of documents that were written  
16 inside the company in response to that document? Did  
17 you do that kind of review?

18 A. Because of the way the information came at  
19 me, that is, that it was based on stuff coming out  
20 through discovery, it came out sorted by subject and by  
21 time, it came out unsorted, so I got a chunk of  
22 information to look at. Also, the discovery didn't  
23 give me access to all the documentations alluded to in  
24 that. So if this document was referring to a prior  
25 meeting or a prior document in some cases, that

1 document was not available to me. So this was not a --  
2 and I don't have experience in these things, so maybe  
3 this is very typical of the way in which information  
4 comes out, but it was incomplete in some senses of  
5 source documents referred to in documents that I did  
6 look at. Some of those documents I did not have access  
7 to.

8 Q. Now, am I right, Dr. Carter, you have never  
9 been involved as an expert witness in litigation  
10 before?

11 A. That's correct.

12 Q. Is that true?

13 In fact, you have never really been involved  
14 in this kind of civil litigation before; is that right?

15 A. That's true.

16 Q. And the discovery process is a process that  
17 is completely new to you beginning with this case; is  
18 that right?

19 A. The particulars of it, right.

20 Q. And in understanding the discovery process,  
21 you've had to rely on the lawyers for the State of  
22 Texas, correct?

23 A. Not exclusively.

24 Q. Who else did you rely on?

25 A. The Internet.

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1 Q. In terms of the documents that are available  
2 to you to review in the discovery process, your  
3 reliance again has been on the Internet and on the  
4 State of Texas; is that right?

5 A. When I would -- indirectly, yes, but if I  
6 would go through a document and I'd find references to  
7 other documents in the document I looked for, I'd ask  
8 Texas to provide me that source data. In that sense, I  
9 was directing them what I wanted them to send me, yes.

10 Q. Ultimately you would work through Texas to  
11 obtain the materials; is that right?

12 A. In terms of the material that was still being  
13 kept in legal channels, that's the basic way in which I  
14 got access to it.

15 Q. Okay. Now, when you would see a memo, let's  
16 say it was a memo that said we're going to -- do you  
17 recall the deadwood memo?

18 A. Generally.

19 Q. Does that ring a bell for you?

20 A. Generally.

21 Q. We're going to talk about that later, but I'm  
22 going to use it simply as an example now.

23 A. Uh-huh.

24 Q. When you read that memo, did you ask to see  
25 any further follow-up on that memo to see what happened

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1 after you read that memo? Did you want to see what  
2 happened?

3 A. I asked to look at any other documentation  
4 that alluded to the term deadwood, and other  
5 documentations were provided, so --

6 Q. There were other documents that alluded to  
7 the term deadwood?

8 A. Yes.

9 Q. And what were those?

10 A. Well, the one that comes to mind is there's  
11 the basic document that's come out of, that alluded to  
12 deadwood equaling documentation that needed to be  
13 destroyed or moved offshore, in this case, I think  
14 moved offshore, but in the coding taxonomy  
15 documentation that came out, deadwood I believe was  
16 mentioned in that also. So I was curious about the  
17 term: Does it mean deadwood as in dead file, deadwood  
18 as a code word for documents we want to avoid discovery  
19 on or whatever?

20 Q. Did you ever ask anybody from the State of  
21 Texas if they had any more information or evidence  
22 relating to what happened to the deadwood documents?

23 A. Yes, and I got the coding taxonomy document  
24 as one document that indicated that there was a series  
25 of documents that were coded either Janice, deadwood or

1 several other code words they used, that you could  
2 trace through the documents that were coming out.

3 Q. Okay. Did anybody ever tell you whether they  
4 had any documentation or information to confirm or  
5 refute that the so-called deadwood files had been  
6 destroyed or sent overseas?

7 A. The coding taxonomy document sets up a  
8 category for at least coding for filing or coding for  
9 handling of that category of documents. The document I  
10 looked at referred to shipping it offshore.

11 THE VIDEOGRAPHER: Counsel, sorry to  
12 interrupt, but we're almost out of tape again.

13 MR. LERMAN: Okay, let's change it.

14 THE VIDEOGRAPHER: This is the end of tape  
15 number 2 in the deposition of Dr. Ronald W. Carter.  
16 The deposition will be continued on tape number 3. The  
17 time is 2:08 p.m., going off the record.

18 (Brief recess.)

19 THE VIDEOGRAPHER: Back on the record. This  
20 is the beginning of tape number 3 in the deposition of  
21 Dr. Ronald W. Carter. The time is 2:15 p.m.

22 Q. Dr. Carter, in talking about the deadwood  
23 memo, as you sit here today, do you know whether the  
24 documents described in that deadwood memo were actually  
25 destroyed or shipped overseas?



1 A. No.

2 Q. Do you have any idea what happened to those  
3 documents?

4 A. I have an idea of what the author of the memo  
5 intended to happen to those documents and that is that  
6 they be shipped out of the jurisdiction to be turned  
7 over, so offshore or whatever offshore meant.

8 Q. Did it happen?

9 A. I don't know. It was intended to happen.

10 Q. Would it be significant in your analysis to  
11 find out whether or not that proposal actually was  
12 carried out by Brown & Williamson?

13 A. It is irrefutable that the policy that was  
14 planned and carried out of shipping documents out of  
15 the continental United States to avoid discovery was a  
16 pattern of behavior to which the deadwood article is  
17 another window into.

18 Q. Can you describe any incident in which  
19 documents were shipped overseas?

20 A. I can describe many incidences referenced in  
21 the documentation, primary source documentation coming  
22 out of the tobacco industry with references to setting  
23 up accounts and moving documents offshore in general.

24 Q. Which documents?

25 A. The documents talked about categories that if

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1 discovered by, quote, plaintiffs lawyer, would be  
2 difficult in litigation, so the reasonable assumption  
3 was that those documents related to things that the  
4 tobacco industry did not want to be released and so one  
5 technique, one technique was destruction, one technique  
6 was shipping the documents where they couldn't be  
7 discovered.

8 Q. With respect to the memos that you're  
9 referring to regarding not wanting documents  
10 discovered, do you know what happened to those  
11 documents?

12 A. Not ultimately.

13 Q. You do not know whether or not they were  
14 actually brought over or not brought over, destroyed or  
15 not destroyed, do you?

16 A. I do. There's other documentation that  
17 referred to documents that were being stored, had been  
18 shipped out of the United States for storage at various  
19 places. Cologne was mentioned, Britain was mentioned,  
20 several other places were mentioned that were in the  
21 context of the memo writers or the document preparers,  
22 the express purpose for doing that was to avoid  
23 discovery.

24 Q. Now, when we go through your expert opinions,  
25 because I'm not going to go down this road right now,

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1 when we go through your expert opinions, would you  
2 please be prepared to discuss exactly what the evidence  
3 is for what you're saying.

4 A. Okay.

5 Q. Thank you. Now, it's -- have you made any  
6 study to determine whether the documents that you have  
7 reviewed are representative of documents of their kind  
8 at the tobacco companies?

9 A. Yes.

10 Q. And how have you conducted that study?

11 A. By -- study may be too strong a word. As a  
12 part of my overall analysis and my overall approach, I  
13 looked for trends and patterns associated with the  
14 documentation. If I saw an odd document that didn't  
15 seem to correlate with any pattern of either trying to  
16 expose information on a pattern basis or hide or  
17 deceive or manipulate or destroy information on a  
18 pattern basis, I looked for confirmation to fit either  
19 of the paradigms. In almost all cases, I found the  
20 general trend that fit the paradigm of information  
21 operations. That was my analytical approach.

22 Q. Do you believe that you have reviewed a  
23 representative sample of the tobacco companies'  
24 documents?

25 A. I reviewed no documents that haven't been

1 released. I reviewed no documents, nor could I, that  
2 have been destroyed or shipped off where they avoid  
3 discovery. So I haven't -- I have not obviously looked  
4 at those documents. I've looked at what I consider a  
5 very representative sampling of the documentation which  
6 has a very, from an analyst's point of view, a very  
7 definite trend in what that documentation says.

8 Q. Have you reviewed a representative sample of  
9 the tobacco companies' documents that are available?

10 A. Which is exactly the question you just  
11 asked. I go to my same answer. I feel I have. I  
12 think that's the second time I've answered that.

13 Q. Okay. Based on -- strike that.

14 A. Now, again, I base it on the fact of what has  
15 come out. I don't know the documentation that's still  
16 successfully hidden from public view, therefore, hidden  
17 from me. I don't know what I don't know, I guess is  
18 the other way to say it.

19 Q. Now, am I correct that the methodology about  
20 which you intend to testify is information operations?

21 A. Yes.

22 Q. And is that the method, the tool of analysis  
23 that you bring to bear on the data that you've looked  
24 at?

25 A. Yes.

1 Q. Information operations is your expertise; is  
2 that right?

3 A. Yes.

4 Q. You are presenting yourself to the jury as an  
5 expert because of your expertise in information  
6 operations; is that right?

7 A. That is true.

8 Q. And not because of expertise in some other  
9 area; is that correct?

10 A. The other area to which I am -- I have  
11 considerable expertise is in analysis, analysis in this  
12 case of information associated with information  
13 operations, but I've got years of experience as an  
14 analyst and as a researcher and as a report writer.

15 Q. Okay. Are you presenting yourself as an  
16 expert in analysis or as an expert in information  
17 operations?

18 A. Analysis is embodied in information  
19 operations.

20 Q. All right. Part of the thing that an expert  
21 in information operations must have is skill in  
22 analysis; is that right?

23 A. I believe so, yes.

24 Q. All right. So the key to your opinions in  
25 this case rests in your application of this information

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1 operations methodology; is that right?

2 A. To the extent that I fit into the case, yes.

3 Q. Okay. Can you define information operations?

4 A. Yes.

5 Q. Can you do so.

6 A. Okay. The working definition that I think  
7 that's most helpful here and the definition that I  
8 think is clear is the enterprises, businesses,  
9 organizations, whatever they are, operate with  
10 information and information systems. An information  
11 system can be a computer with software and  
12 communications associated with it, so it could be  
13 technology, or it could be decisionmakers. It could be  
14 the head lawyer, chief lawyer in a law firm, if he's  
15 critical, he or she is critical to that organization  
16 enterprise.

17 So organizations operate, rely heavily on  
18 information and information systems. Those systems can  
19 be attacked and those systems knowingly need to be  
20 defended. So then the military context, you're trying  
21 to protect your information and information systems  
22 from outside attack or influence, and you're trying to  
23 conduct that operation, that attack on an opposing  
24 force or could be an adversary if you're in war or it  
25 could be wherever our government has put us to defend

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1 vital interests, Haiti, Somalia, Bosnia, places like  
2 that.

3 The Defense Department has looked at that.  
4 One of the reasons it is important to them is that all  
5 enterprises, all business, civil or military, operate  
6 on those same principles, that they have information  
7 and information systems, those systems are subject to  
8 being attacked, attacked in the sense of persuaded,  
9 managed, controlled, influenced, and therefore your  
10 friendly or your own systems need to be protected, and  
11 whoever you're conducting this against are vulnerable  
12 to attack.

13 That is sort of a working knowledge of it. I  
14 can get out the regulation, Army regulation and read  
15 you the formal definition, but I think it generally  
16 patterns along that.

17 Q. That's how you would define information  
18 operations?

19 A. That's the working definition that I think is  
20 useful here and I think that's what -- I've given many  
21 lectures on that subject and that definition serves me  
22 well.

23 Q. Can you name any college or university that  
24 grants a degree in information operations?

25 A. No.

1 Q. Do you know any college or university in the  
2 civil sector that teaches a course in information  
3 operations?

4 A. In the civil sector, you mean a non --

5 Q. A nonmilitary.

6 A. Nonmilitary, I don't know. Let me be clear.  
7 The term military operation is accepted within the  
8 Defense Department as the title of what I just  
9 mentioned to you. On the civil sector, it could be  
10 called perception management, it could be called a  
11 knowledge strategy. There are various names for it.  
12 So for the purposes of this, the civil definition might  
13 fall under the term or usually would fall under the  
14 term perception management.

15 Q. Perception management or knowledge strategy?

16 A. Those terms have come up in defining this  
17 body of, this discipline, this strategy.

18 Q. Do you know, and now talking civilian only,  
19 not military, do you know any college or university  
20 that grants a degree in perception management or  
21 knowledge strategy?

22 A. No.

23 Q. Do you know of any university that teaches a  
24 course in perception management or knowledge strategy?

25 A. Yes.



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1 Q. Which one?

2 A. Many.

3 Q. Who?

4 A. The whole discipline of psychology,  
5 information, information system, embodies discussions  
6 of information systems and how they can be swayed,  
7 attacked or manipulated.

8 Q. Is information -- let me ask you this: Is  
9 there a difference between perception management and  
10 knowledge strategy on the one hand, versus psychology  
11 on the other?

12 A. Psychology would probably be a broader  
13 category, but I would see in psychology courses, you  
14 would talk heavily about perceptions and how people  
15 perceive life, reality, versus perceptions.

16 Q. Is there a difference between somebody who is  
17 an expert psychologist and somebody who is an expert in  
18 information operations?

19 A. Yes.

20 Q. So when I ask you if there are any courses  
21 that are taught in perception management or knowledge  
22 strategy, what is your answer?

23 A. The answer is there are various courses  
24 taught to which perception -- if you're looking for a  
25 course entitled perception management, I have not been

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1 through college syllabuses lately. I do know that the  
2 discipline of perception management is a college-taught  
3 discipline under various degreed programs. There is  
4 no, to my knowledge, a degree in perception  
5 management. I may be even wrong in that case, I'm not  
6 sure.

7 Q. What college courses are you aware of that  
8 teach students how to attack opponents' information and  
9 information systems?

10 A. The Defense Management College in  
11 Washington, D.C. teaches various courses, the Command  
12 and General Staff College, about 40 training doctrine  
13 command courses. Obviously I'm naming defense  
14 courses. This is a large, important discipline of  
15 study in all those colleges.

16 Q. In the military?

17 A. Yes, in the military.

18 Q. What civilian college teaches a course in  
19 attacking an opponent's information and information  
20 systems?

21 A. I'll answer it like I did before. There are  
22 courses in information strategy, information management  
23 to which if you read the syllabus, there are various  
24 subelements of those courses that talk about perception  
25 management. Now, there may even be courses these days,

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1 but there's not a degree in perception management to my  
2 knowledge, if that's what's important to you.

3 Q. Are there textbooks in information  
4 operations?

5 A. Yes.

6 Q. What are they?

7 A. Field Manual 100-6, JCS Publication 3-13. I  
8 can provide you a fuller listing, but there's extensive  
9 published documents or documentation on that subject.  
10 There is civilian literature out there on perception  
11 management, persuasion, influence, strategy, persuasion  
12 strategies, but I am not here to sit and go through  
13 authors and titles with.

14 Q. Doctor, let me be clear with you. I am sure  
15 that there are lots of documents -- let me rephrase  
16 it.

17 There are lots of articles, textbooks and  
18 courses that deal with marketing, that deal with how to  
19 be a good salesman, that deal with how to get a good PR  
20 story out for your company, that deal with how to deal  
21 with legislatures and governments, and how to design  
22 strategies for corporate success. As I understand it,  
23 that is different from information operations.

24 A. Those are components of information  
25 operations.

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1 Q. But those are not information operations, are  
2 they?

3 A. Not in its wholistic sense.

4 Q. So information operations includes all of  
5 these disciplines?

6 A. Yes.

7 Q. And you're an expert in every one?

8 A. I'm an expert in the application and  
9 integration of those disciplines into this body of  
10 discipline called information operations, and I've done  
11 it for years and I've done it very successfully for  
12 years. Now, the difference is I'm a practitioner. I'm  
13 not a scholar in it, I'm not a pedagogue to, I'm not  
14 a -- I do not conduct academic study in this area for  
15 the sake of publishing and creating a library body of  
16 knowledge in this area. I am a practitioner of IO. I  
17 do it all over the world. I just came from a major  
18 symposium where I was one of the lead speakers on the  
19 subject. I'm an expert in it.

20 Q. To whom were you speaking?

21 A. I'm speaking principally to the Department of  
22 Defense. I also because of various degrees understand  
23 how information systems and information and decisions  
24 are made in any enterprise, be they civil or military.  
25 My direct experience, my long-term direct experience is

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1 in the Department of Defense.

2 Q. Is somebody who has an expertise in  
3 accounting also an expert in mathematics?

4 A. I don't know.

5 Q. Well, don't you use numbers in accounting and  
6 don't you have to add and subtract?

7 A. Mr. Lerman, if I go out in my backyard and  
8 the grass needs to be cut and I get out my lawn mower  
9 and I cut it, and I look at the results of that, I know  
10 that I had a before and an after. I needed the lawn to  
11 be cut. Now the lawn is cut. I don't need to know  
12 about the operations of the combustion engine or how  
13 gas and spark and rotaries and whatever goes around. I  
14 can see the effects of it.

15 I can apply expertly, and have and have done  
16 very successfully, the tools, the components, the  
17 pillars, the legs of IO in an integrating IO strategy.  
18 I've done it very successfully. I just came from the  
19 Army War College where I was one of the lecturers up  
20 there in a program called Army after next, which is  
21 what does the Army need to look like in the year 2025.  
22 I was asked to go up there as one of a few folks  
23 because of my acknowledged expertise in IO.

24 I can go on on the extent of my background in  
25 IO, and how this is a universal, where IO has universal

1 application. I drew the distinction between perception  
2 management and IO, two titles that roughly equate to  
3 the same thing, because IO as a title is used within  
4 the Defense Department. There are certain titles used  
5 outside. You may go in to a university professor and  
6 ask him about perception management or knowledge  
7 strategy or information age technology, I mean, there's  
8 a lot of titles that it could go by or be hidden  
9 under. That is my point.

10 Q. Are there any nonmilitary textbooks in  
11 information operations?

12 A. Under that title?

13 Q. Yes.

14 A. Or under the title of perception management?

15 Q. Under the title information operations.

16 A. No. Not to my knowledge, no.

17 Q. Is there any textbook under the title  
18 perception management?

19 A. I'll bet there is.

20 Q. But you don't know?

21 A. I haven't read it, but I've read the  
22 equivalent of it in the form of military texts that  
23 speak to the same subject, and those military texts are  
24 researched from many sources to include textual  
25 documentation that's available to universities.

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1 Q. Are there any published journals in  
2 information operations?

3 A. Yes.

4 Q. What is that?

5 A. There's the journals within the Department of  
6 Defense that regularly speak to this. Fort  
7 Leavenworth, Kansas, the Army puts out training  
8 documents on it. The Army training command puts out  
9 documents on it. It's a well researched discipline and  
10 application.

11 Q. Within the military?

12 A. Within the military under the title  
13 information operations.

14 Q. Is there any professional society outside of  
15 the military for society of information operations  
16 analysts?

17 A. Not to my knowledge. I don't know. The real  
18 answer is I don't know.

19 Q. Professional society for perception  
20 management experts?

21 A. Could be, but I don't know.

22 Q. Can you name the leading civilian experts in  
23 information operations?

24 A. Burson-Marsteller come to mind, is a  
25 recognized civilian public relations firm, I believe

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1 either now or in the past under the employ of Philip  
2 Morris, who's a recognized expert in the field of  
3 perception management.

4 Q. You're saying Philip Morris is an expert in  
5 information operations?

6 A. I'm saying Burson-Marsteller. I can get you  
7 the title, it's right there.

8 Q. You're saying they are experts in information  
9 operations?

10 A. They are experts in perception management.  
11 They have a -- their company --

12 Q. What is their company?

13 A. Their company is a company that performs  
14 perception management for whoever hired them.

15 Q. What kind are --

16 A. They're under the --

17 Q. What kind of company do they have? What do  
18 they bill themselves as?

19 A. A perception management applier in your  
20 industry. You hire them, and tobacco has, I think  
21 Philip Morris has, and they come and they teach you how  
22 to persuade, influence customers or regulators. This  
23 is right out of their own literature. Now, if they're  
24 lying --

25 Q. Do they call themselves a perception



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1 management company?

2 A. Yes.

3 Q. They use that phrase?

4 A. Yes.

5 Q. That's how they bill their company?

6 A. Yes.

7 Q. They bill themselves as public relations?

8 A. They bill themselves as experts in perception  
9 management, and they go through a very detailed  
10 description that's very much, very close to the  
11 definition of information operations, that tells you,  
12 the client, how you can persuade, influence, manipulate  
13 and control information going to a target audience and  
14 cause them to be influenced in a manner in which you  
15 want them influenced. That is what IO is. And that's  
16 how they define themselves as perception managers.

17 Q. So you have decided that FM 100-6 and those  
18 who are skilled in the military version information  
19 operations are also experts in what Burson-Marsteller  
20 calls perception management; is that your testimony?

21 A. Yes.

22 Q. And on what do you base that?

23 A. I'm reading the literature that's out there  
24 on the civil side that shows that almost exactly what  
25 in the civil sector is referred to as knowledge

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1 strategy, perception strategy, which is regularly  
2 employed, to include by tobacco, is what we in the  
3 military use this rubric term information operations.

4 That's the reason I want to draw a  
5 distinction. Every time you say, does the civil sector  
6 do anything in IO, they don't call it IO, they call it  
7 perception management.

8 Q. Do you have a background in corporate public  
9 relations?

10 A. I have a master's degree in business  
11 administration in which public relations in the  
12 corporate world was an item of study.

13 Q. When you were trying to figure out how to  
14 hide information from the Viet Cong, do you equate that  
15 with the same kind of experience that people who work  
16 at Burson-Marsteller have?

17 A. If you read the literature at  
18 Burson-Marsteller, I don't want to get into, you know,  
19 examples that may have implications that go beyond your  
20 question. I can tell you that Burson-Marsteller in  
21 very extensive literature that's available, has been  
22 made available to us, is available to you, go in great  
23 depth of describing the range of their ability to  
24 influence and control the perceptions and the way  
25 information comes to decisionmakers. If you've got a

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1 target audience, in this case, Philip Morris has hired  
2 them to represent them or to teach them how to be  
3 artful in this area.

4 Q. When did Philip Morris hire them?

5 A. I don't know the date.

6 Q. What was the scope of the work they were to  
7 perform?

8 A. They -- I don't know. I read their  
9 literature in terms of the scope, their prepared  
10 proforma.

11 Q. Did you read the contract between Philip  
12 Morris and this company?

13 A. I read the extensive advertising of their  
14 core competence as to what this company can do for  
15 Philip Morris, and Philip Morris, I believe, and other  
16 members of the tobacco industry, has had them under  
17 their employ. Now, to the --

18 Q. So the answer is, Doctor, that you don't know  
19 the scope of the engagement between Philip Morris and  
20 this company, that you have not reviewed any documents  
21 that would describe the scope, that all you have done  
22 is read the literature of the company and assumed that  
23 whatever they were hired to do has been described in  
24 that literature; isn't that really the nature of your  
25 testimony?

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1           A.    Everything defined in their literature says  
2   that we are experts in perception management. There's  
3   other documentation that says that that expertise was  
4   brought to bear by Philip Morris in their public  
5   relations and perception management campaign. Now, why  
6   else would you hire Marsteller, who advertises  
7   themselves as a world renowned expert in perception  
8   management, what I'm trying to call information  
9   operations, if not to use them in that area in which  
10   they're the experts? I think analytically,  
11   judgmentally, that's a logical conclusion.

12           Q.    That's the conclusion you draw without  
13   looking at any further documentation; is that your  
14   testimony?

15           A.    There's plenty of documentation that refers  
16   to Marsteller's role in tobacco strategy in terms of  
17   influencing perceptions of their target audiences.

18           Q.    Who at Marsteller has worked for the tobacco  
19   industry?

20           A.    Marsteller as an institution has worked for  
21   the tobacco industry.

22           Q.    When were they hired?

23           A.    I don't know when they were hired. They're  
24   in the employ in several documents. In several  
25   documents that are available, they are in their employ

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1 during that period.

2 Q. What did they do specifically? What project  
3 did they work on?

4 A. They worked on -- you know, I don't have a  
5 window into exactly what went on in the boardroom, but  
6 if I hire a company to build cars for me, I think  
7 they're probably going to build cars for me. These  
8 people bill themselves as experts in perception  
9 management and will bring that expertise to you and  
10 your enterprise if you hire us. They hired them. Now,  
11 what would a reasonable person conclude from that?

12 Q. The State of Texas hired you, didn't they?

13 A. No.

14 Q. Who did they hire?

15 A. They hired my company.

16 Q. Did they hire your company to carry out an  
17 information operation?

18 A. No, they asked my company to find out who  
19 within the company had expertise, and they already knew  
20 that some of us did, in information operations and they  
21 asked us to apply that technique to some literature  
22 that was at that time available to see if there was any  
23 correlation between that information and what was  
24 called information operations.

25 Q. We're getting lost, sir. Is it your

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1 testimony that you are a marketing or public relations  
2 expert? Yes or no.

3 A. No.

4 Q. Are you an advertising --

5 A. I am saying, though --

6 Q. I'm asking the questions.

7 Are you an advertising expert?

8 A. To the extent of employing advertising as a  
9 tool of information operations that's integrated into  
10 information operations, yes.

11 Q. When have you ever employed advertising in  
12 your role in the military over 30 years?

13 A. 30 years.

14 Q. What advertising have you used, sir?

15 A. Ever turn on the TV and see a screen that  
16 says join the Army today? You ever turn on -- there's  
17 a whole discipline within the Army that I have been  
18 very closely associated with called public civil  
19 affairs.

20 Q. What was your role --

21 A. You're going to --

22 Q. No. What was your role in developing  
23 advertising that was run by the Army?

24 A. My role was to research what the opposing  
25 force, this case enemies of the state, are susceptible

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1 to and then apply the tactics of IO to those  
2 vulnerabilities. I did it in Bosnia, I did it in  
3 Somalia, I did it in Vietnam, I did it in Korea, and I  
4 did it very successfully.

5 Q. Did you ever advertise a consumer product,  
6 and by that I mean a product that a consumer can buy  
7 and uses regularly, Coca-Cola?

8 A. No. Have I ever advertised Coca-Cola, no.

9 Q. Have you ever advertised a consumer product  
10 like Coca-Cola?

11 A. No.

12 Q. Have you ever designed an advertising  
13 campaign for a consumer product like Coca-Cola?

14 A. No.

15 Q. Have you ever devised a government affairs  
16 strategy for a private company?

17 A. No.

18 Q. Can you name any other experts in information  
19 operations?

20 A. Within the Defense Department, there are  
21 various folks that probably have a significant amount  
22 of knowledge in it, but I don't know if they tout  
23 themselves as experts. I went to the Army War College  
24 and lectured there and in other places because of some  
25 of my unique experience and skills. We have a number

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1 of people in the military who are becoming extremely  
2 knowledgeable in this discipline because of its  
3 importance. Whether they tout themselves as experts, I  
4 don't know, but they're accomplished practitioners of  
5 this discipline.

6 Q. And what is the discipline exactly? Describe  
7 the discipline of information operations.

8 A. The discipline of information operations is  
9 built on seven pillars. I keep use using the word  
10 pillar because in the military text, it's shown as  
11 pillars of a building and it's a memory jogger for  
12 students. It involves operational security or hiding  
13 information, it involves destruction of information, it  
14 involves electronic warfare or electronic attack of  
15 information systems, it involves deception, it involves  
16 civil affairs or public affairs, it involves  
17 advertising, it involves deceptive -- I'm sorry,  
18 psychological operations.

19 So there's seven or eight pillars of  
20 component parts to IO to which if you equate, it's a  
21 knowledge strategy of integrating those pillars into an  
22 integrated IO campaign. So you take elements of  
23 hiding, elements of influence, and elements of  
24 destroying, elements of electronic attack, elements of  
25 civil or public affairs, and integrating them into an



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1 integrated strategy. That's what information warfare.  
2 is. Now, perception management has many of the same  
3 features, is what I'm saying.

4 Q. You're not an expert in perception  
5 management, are you, Dr. Carter?

6 A. Yes, I am. I am in the sense that in the  
7 civil context, the word information warfare is referred  
8 to as perception management and it's a large, large  
9 body of what it is. Now, I've obviously applied this  
10 trade craft extensively in the military because that's  
11 where I've been.

12 Q. What methodology do you employ as an  
13 information operation specialist?

14 A. What methodology do I employ?

15 Q. Yes.

16 A. The most root methodology is to find out as  
17 much as you can about the decision process of your  
18 target audience. In the military, if I may use a  
19 military example, if our forces are put back into  
20 Haiti, which was not a war but an effort to try to  
21 stabilize the country, but that's where we get employed  
22 in many cases, in humanitarian and nonwar-fighting  
23 events these years, you would want to find out as much  
24 as you can about the forces you're going in on: How  
25 are they organized, how do they command and control?

1 How do they communicate? Who are the key  
2 decisionmakers? If you influence the decisionmaker,  
3 you can have an adverse effect on his process. Where  
4 are the key communications nodes, if you want to have  
5 an electronic attack? What does the civil population  
6 think about the introduction of U.S. forces in there?  
7 So you do a monumental data gathering process, you  
8 might call it market research.

9 Q. You would call that market research?

10 A. I'm saying in the military context, you want  
11 to know as much as you can about the environment you're  
12 going into, okay?

13 Then you look at the tools that you have  
14 available to hide, electronic attack, deceive,  
15 manipulate, control, destroy those systems that are  
16 available to that force, to that element you're going  
17 to try to influence. Then you want to see where are  
18 they vulnerable and apply these tools to their  
19 vulnerabilities. All the time you're doing this  
20 offensive piece, this attack piece, and almost as  
21 important, well, as important, is you're defending from  
22 that. It doesn't require always technology attack.

23 A good example of an information attack where  
24 we were the victims was the mental picture of soldiers  
25 being drug through the streets in Somalia when we were

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1 over there initially in a humanitarian mission. That  
2 mission crept over into a headhunting attack on a  
3 warlord, Adid. In the process of doing that, soldiers  
4 were killed. This was a major media event for the  
5 Somalis, for the warlords. They promulgated to the  
6 American people soldiers, dead soldiers being drug  
7 through the street.

8 In reflection, as we looked at that, that  
9 really broke the will of the U.S. public and Congress  
10 to stay the course in Somalia. So we had this Third  
11 World warlord using in this case media attack on a  
12 First World Army like this and we left a short time  
13 thereafter. That's an example of where you can use  
14 other than the kinetic solution, other than bullets and  
15 bombs and airplanes and ships and tanks, to cause the  
16 conflict to be resolved the way you want, and  
17 information warfare is key to doing that.

18 Q. What's the difference between an information  
19 operation and a campaign strategy to become elected to  
20 public office?

21 A. It depends on the user. If the elected  
22 official or the want-to-be elected official wants to  
23 employ all these strategies, they can. But it's more  
24 than advertising, it's more than public relations.  
25 It's more than -- when I explained to you the various

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1 legs of IO, I was intending to say that what makes it  
2 IO is the attempt to try to use multiple pillars,  
3 multiple legs and synchronize them and integrate them  
4 such that they have a synergistic effect. So while  
5 you're hiding, you're deceiving. While you're  
6 deceiving, you're influencing. While you're  
7 influencing, you're destroying. And if you do that  
8 artfully, and it can be done artfully, you can have a  
9 monumental impact on the decision process of the  
10 opposing force or -- and it can be done to you.

11 Q. Does IO always involve deception?

12 A. No. It's all --

13 Q. Does IO always involve destruction?

14 A. No.

15 Q. Does IO always involve an offensive attack  
16 against your opponent?

17 A. No.

18 Q. Has this methodology that you've just  
19 described ever been set out in an academic writing  
20 outside of the military?

21 A. I have not seen but, but Marsteller seems to  
22 have made a cottage industry off of it, and I suspect  
23 there is. They're the recognized experts in this  
24 area.

25 Q. Has this methodology that you've just

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1 described ever been subject to scientific peer review  
2 outside the military?

3 A. Perception management?

4 Q. Information operations.

5 A. I keep mentioning to you, that term is a  
6 recognized term within the Department of Defense.  
7 Rough equivalent to it in the civil sector is  
8 perception management. So when you ask me any question  
9 that says does the civil sector use the term  
10 information operations, I would say for point of  
11 clarity, they probably recognize it under the rubric  
12 title of perception management, which means roughly the  
13 same thing.

14 Q. Do you know what scientific peer review is?

15 A. Other than what the words say, it seems like  
16 a process of trying to get at the authenticity of what  
17 they're looking at, but I don't know.

18 Q. Have you ever been subjected to scientific  
19 peer review?

20 A. Outside the military?

21 Q. Uh-huh.

22 A. Within the military, many times. Outside the  
23 military, I've been subject to many types of peer  
24 review.

25 Q. Is there a certification that you get outside

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1 of the military in information operations?

2 A. I don't know.

3 Q. Is there a certification that you get outside  
4 the military in perception management?

5 A. I don't know what you mean by certification.  
6 You mean --

7 Q. Are you board certified? Are there tests  
8 that you take to be admitted to this profession? Is  
9 there a degree that you get in perception management?

10 A. There is a recognized discipline, there's a  
11 body of knowledge. There's organized civil  
12 organizations, businesses, that deal in this discipline  
13 and they practice it.

14 Q. My question to you is: Is there -- let's  
15 talk perception management. Is there a degree in  
16 perception management that can be given?

17 A. Not to my knowledge. I don't know.

18 Q. Are there board certifications or licensing  
19 procedures to become a perception management expert?

20 A. I don't know.

21 Q. Is there a credentialing process of any kind  
22 that you know of to become a perception management  
23 expert?

24 A. You said that I know of. I would assume that  
25 if a firm advertises itself as an expert in a field,

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1 well experienced in this discipline, that there would.  
2 be some, some form of requirement to prove that they  
3 are, but I don't know if it's an accredited,  
4 certification, diploma or whatever.

5 Q. But you would assume that just based on the  
6 fact that you read it in an advertisement?

7 A. I assumed it because it's been broadly  
8 advertised as one of the key perception management  
9 companies and they're in the employ of the tobacco  
10 industry.

11 Q. Is the methodology that you have just  
12 described -- let me start over again.

13 Have you ever testified as an expert before?  
14 I think the answer is no.

15 A. That's true.

16 Q. Do you know of anybody who has ever testified  
17 in any litigation anywhere in the country as an  
18 information operations expert?

19 A. I do not know.

20 Q. Do you know of anybody who has ever testified  
21 anywhere in the country as a perception management  
22 expert?

23 A. I do not know.

24 Q. Do you know anybody who has ever been  
25 accepted by a court of law as an expert in the area of

1 information operations?

2 A. I don't know.

3 Q. Same question for perception management.

4 A. I don't know.

5 Q. Have you ever designed a civilian information  
6 operations exercise?

7 A. An exercise?

8 Q. I mean, an information operations plan,  
9 civilian.

10 A. I've not designed one. I've analyzed one.

11 Q. How many others have you analyzed?

12 A. Two others.

13 Q. Which two?

14 A. Companies that we have business interests in  
15 in terms of where this technology or where this  
16 discipline applies in the civil sector. I looked at  
17 various vulnerabilities of the company to attack and  
18 advised them on how they might --

19 Q. Is this an area where Cubic Associates is  
20 trying to expand its business?

21 A. It's an area in which we have an entire  
22 division, directorate. It's a directorate called  
23 intelligence and information operations, and they're  
24 always trying to expand it.

25 Q. Now, we've talked about the role of the



1 expert in this litigation and you'll agree with me that  
2 some of the things that the expert needs to do is to be  
3 accurate; is that right?

4 A. That's possible, right.

5 Q. To be careful?

6 A. Yes.

7 Q. Tell it like it is?

8 A. Yes.

9 Q. Would you agree with that?

10 A. Right.

11 Q. The good and the bad?

12 A. Right.

13 Q. Because your testimony may be relied upon by  
14 the court and the jury, and it requires you to do a  
15 thorough, careful, unbiased job; is that right?

16 A. Right.

17 Q. Now, have you completed the work necessary to  
18 have formulated the affidavit in this case and your  
19 expert disclosure? Are those documents truthful?

20 A. The documents represent my analysis to this  
21 point and I will continue to look at documents that  
22 become available or will be made available right up to  
23 the time I testify, if I testify.

24 Q. When your affidavit of September 8th was  
25 prepared, did you know it was going to be submitted to

1 the court?

2 A. Yes.

3 Q. Did you know the court was going to be asked  
4 to rely upon it?

5 A. I generally knew that.

6 Q. Did you understand that the court would be  
7 making decisions and your affidavit was somehow going  
8 to be relevant to those decisions?

9 A. That was generally what I expected it to be  
10 applied to.

11 Q. All right. Then when you prepared your  
12 affidavit, you intended it to be ready for  
13 consideration by a court of law; is that right?

14 A. That's true.

15 Q. So the opinions expressed in that affidavit  
16 are ready for consideration by a court of law; is that  
17 right?

18 A. Absolutely.

19 Q. What work product have you created since  
20 you've started working on this case? What is your work  
21 product?

22 A. Define work product.

23 Q. What have you generated? You've reviewed  
24 materials?

25 A. Right.

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1 Q. What have you produced?

2 A. I've produced a paradigm conclusion that the  
3 body of evidence, the universe of data that I've had  
4 exposure to closely correlates, duplicates the pattern  
5 of activity that I am well versed on in the Defense  
6 Department known as information operations. It's been  
7 a systematic process that's gone on for 40, 45 years.  
8 It's been well resourced, it's deliberate and it fits  
9 the pattern of what I've defined as IO very well.

10 Q. Let me be more clear in my question because I  
11 was not clear.

12 Have you produced any reports?

13 A. I have not. I produced my affidavit.

14 Q. Other than your affidavit, have you produced  
15 any summaries of documents?

16 A. No, I was not asked to.

17 Q. Have you produced any indices of documents?

18 A. I have some by category, but they're not  
19 ready for publication if that's what you -- I did not  
20 go into this thing to try to codify in either summary  
21 form or not. I put them -- through working with my  
22 assistant, I put them into documents that I could  
23 retrieve them from. But my intent here was not to  
24 create a report, that's not what I was asked to do, but  
25 to generate the affidavit.

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1 Q. Now, that's what I mean by work product. Any  
2 other work product other than this affidavit?

3 A. No. I was never asked to produce another  
4 document.

5 Q. How was the affidavit prepared? What was the  
6 process by which it was prepared?

7 A. I generally prepared it by going through the  
8 data looking to see if the -- if it fit with any  
9 paradigm that involved information systems and  
10 information operations paradigm that had those features  
11 that I described, or was the pattern of behavior and as  
12 reflected in the documents provided been consistently  
13 the antithesis of IO, that is, open, free, truthful,  
14 deliberate, honest, and that be the pattern for the  
15 last 45 years.

16 I took that data that fit the first paradigm  
17 and I tried to put it in terms, I did put it in terms  
18 that I thought would be most understandable to the  
19 audience that was going to read it, the legal audience,  
20 the court audience, and the other audiences that may  
21 review it. I tried to take it out of the military  
22 terms, is what I meant.

23 I lined it up by what I referred to as the  
24 pillars of IO. I lined it up by the subcomponents to  
25 demonstrate where the components of IO are represented

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1 in the behavior of the tobacco industry. So if the  
2 components are recommended and you have an enterprise  
3 or enterprise strategy of long-term deliberate  
4 planning, themes, by their own documents, target  
5 audiences that you're trying to direct this attack on,  
6 or protect yourself from, it fits all of the features  
7 of what I know as IO to be. So I tried to put that in  
8 some sort of clear distinction in the, by those  
9 categories in the expert testimony.

10 Q. Okay. How was this affidavit prepared? Who  
11 physically began writing it?

12 A. I wrote it and others typed it.

13 Q. Okay. Is the affidavit of Ronald, Dr. Ronald  
14 W. Carter, which is signed on September 8, 1997, an  
15 affidavit that you wrote word for word?

16 A. I wrote and attest to every word that's in  
17 there.

18 Q. Your language?

19 A. My language.

20 Q. Start to finish?

21 A. Start to finish. Now, on the cover sheet,  
22 you have other, you know, legal terms and formats there  
23 that are not a part of my testimony.

24 Q. Did the state in any way edit and change  
25 language in that affidavit?

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1           A.   No, I wouldn't let -- no, again, there's --  
2   the document includes the cover area which is in  
3   legalese. I want to separate that from my testimony.  
4   So if my testimony is constituting page 2, those were  
5   my words written objectively. Now -- and I stand by  
6   them. That's the result of my analysis.

7           Q.   Okay. So for instance, when the affidavit  
8   says "based upon a reasonable degree of information  
9   operations probabilities" --

10          A.   Right.

11          Q.   -- that phrase is your phrase?

12          A.   That's my phrase. That's a phrase that can  
13   be, that is used to be a synonym or a corollary to  
14   reasonable analytical probability, reasonable  
15   assurance, what would be a reasonable person conclude  
16   analytically from the body of evidence you looked at.  
17   So that phrase is not uncommon to me.

18          Q.   Did the state review this affidavit before  
19   you signed it?

20          A.   I don't know.

21          Q.   Did you provide it to them before it was  
22   signed?

23          A.   I don't know. I don't know what -- I don't  
24   know how the document was handled. I had it in several  
25   draft forms. The document that came back to me was

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1 generally the way I wrote it.

2 Q. The document came to you from whom?

3 A. From folks that were typing it.

4 Q. Who were the folks typing it? People here,  
5 people here at Cubic?

6 A. Well, it went through several reviews -- not  
7 reviews, but typing processes within Cubic, and because  
8 of the unique format that it has to be in, I'm not sure  
9 where it was finally typed, but they were my words.

10 Q. How many drafts did you go through?

11 A. I don't know, a couple.

12 Q. Did the state participate in editing any of  
13 those drafts?

14 A. No, I wouldn't allow that to happen.

15 Q. Now, you mentioned when you took a look at  
16 the information, you were looking at two paradigms, one  
17 being essentially what you've described as information  
18 operations, and the other you described as or did you  
19 see an open, free, truthful and honest flow of  
20 information. Is that the opposite of information  
21 operations?

22 A. In the paradigm that I tried to -- I said the  
23 data will probably fit three paradigm, paradigm that  
24 loosely or that closely resembles information  
25 operations or it could fit a paradigm of roughly the

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1 opposite of information operations. So if you try to  
2 hide information, as a pattern of behavior, if you try  
3 to do the behavior, hide, destroys, mislead, attack,  
4 destroy, as a pattern of behavior, then let's look for  
5 a pattern of behavior that represents the opposite of  
6 that, and I generally described that as open, free,  
7 honest, consistent, what you say in public is what you  
8 say in private, what you put out in boardrooms is what  
9 you put out to the public. A third paradigm would be  
10 it doesn't correlate, that there is no general pattern  
11 or I couldn't find a pattern to fit to a third, fourth  
12 or fifth paradigm.

13 As I begin the process, it began to fit the  
14 pattern: I found evidence of hiding, I found evidence  
15 of influencing, I found evidence of destroying or  
16 misleading, of influencing. So it began to fit that  
17 pattern very early. I was always looking for either  
18 data that didn't correlate, and I threw out a lot of  
19 data in my study that didn't seem to correlate to  
20 anything, and I was always looking for, and this is my  
21 analytical technique: Don't throw out the second  
22 paradigm, don't be following your initial instincts if  
23 you start to see a pattern develop, but keep  
24 open-minded that that was not a general pattern. So  
25 one lie, one deception, one destruction, one movement,



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1 doesn't make for a pattern of behavior. So I looked  
2 for those patterns of behavior and I found them.

3 Q. In the thousands of documents that you  
4 reviewed?

5 A. Yes.

6 Q. Would you agree with me that to understand  
7 people's motives you need to understand what they  
8 believed was true and why they did what they did?

9 A. I believe to be successful as an IO operator,  
10 you've got to know what there's a tendency to believe  
11 and how you can sway that tendency to your benefit,  
12 which generally is what IO is intending to do.

13 Q. If I were to launch an IO on behalf of the  
14 tobacco companies, would I want to know what the  
15 general public believes about tobacco?

16 A. Yes.

17 Q. If I was analyzing whether the tobacco  
18 industry had launched an IO, would I want to analyze  
19 what the general public believed about tobacco?

20 A. Yes.

21 Q. You didn't do that.

22 A. Oh, but I did. I looked at what their  
23 pattern of interest was. Now, you asked me before what  
24 was the answers to the research and I said I can't  
25 recall those. The fact that they were doing survey

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1 polls, other kind of feedback from the population, from  
2 the target audience, they did that consistently for 45  
3 years. Now, the results of that year by year by year,  
4 I did not go into and commit that to method. The fact  
5 that they were doing it, what is the public perceptions  
6 of smoking, what is the public attitude towards my  
7 brand of smoking, what are the public fears about  
8 health-related effects of smoking, they did that as a  
9 pattern of activity.

10 Q. You're saying that was an indication they  
11 were launching an IO?

12 A. That's an indication that they were  
13 understanding? That's the reason I used the term  
14 market research. They're trying to figure out what the  
15 target audience, in this case current and potential  
16 future smokers, could be swayed by: What are they  
17 thinking? What's working in our current strategies?

18 Q. What research did you do to find out the  
19 answer to that question?

20 A. I didn't find the answer overly relevant, how  
21 successful they were being or not being. I just saw  
22 the pursuit of the task.

23 Q. So the question of whether the companies were  
24 successful in their particular, what you've called  
25 their particular information operation was not the

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1 focus of your inquiry?

2 A. What I was asked to look at is to look, based  
3 on my understanding and knowledge and experience in IO,  
4 is that pattern of behavior evident in the behavior of  
5 an enterprise consisting of seven tobacco companies, a  
6 couple of other firms to include Hilton -- Hill &  
7 Knowlton. Was that pattern of behavior represented  
8 there? That's what I looked at and my conclusions are  
9 yes. In the civil sector, you might call that  
10 perception management strategy. In the military  
11 parlance, that's called information operations.

12 Q. Is the way that the public historically has  
13 perceived cigarettes relevant to your opinions?

14 A. The way that the target audience is receptive  
15 or not receptive to the information campaign is  
16 relevant to observing and analyzing the process or  
17 strategy they're employing. Obviously if you engage in  
18 one element of perception management and it's not  
19 working, you're going to move to another strategy or  
20 you're going to adapt or adopt that strategy, try to  
21 figure out why it's not working.

22 What I want to stress in this process, and I  
23 know it's sometimes hard to understand, is that  
24 perception management is the, information operation is  
25 the integration of a multi-pronged information

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1 persuasion attack on a target audience.

2 Q. Okay, Dr. Carter, is the way in which the  
3 public has perceived cigarettes relevant to your  
4 opinions? Yes or no.

5 A. Maybe. If the effect of the campaign  
6 strategy you're employing is being positive or not  
7 positive, that's interesting. What I looked for is  
8 what are the perceptions of tobacco as they employ that  
9 strategy and how they modify that strategy, that's just  
10 the process I went through in this analysis. It's like  
11 saying you fired the cannon. Did you hit the target?  
12 Hitting the target is not what I was looking for. Did  
13 you fire the cannon is what I was looking for.

14 Q. Okay, fine. What you were looking for is was  
15 there an information operation, not whether it was  
16 successful; is that right?

17 A. The fact whether it was successful or not  
18 successful over time gave me insights as to various and  
19 different strategies that they would use over time.

20 Q. By what means did you measure whether it was  
21 successful or not successful? What work did you do to  
22 measure whether a particular information operation was  
23 successful or not?

24 A. Reviewed internal documents for one thing.  
25 There was a particular one of note in which several of

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1 the tobacco industry, I think it was CEOs or lead  
2 litigants or lead lawyers were meeting and they were  
3 boasting about their success in thwarting regulation.  
4 There was attempts, multiple attempts in multiple  
5 states to create stronger and more persuasive  
6 regulation of the tobacco industry. There was a  
7 scorecard or some sort of system of saying we've won 90  
8 percent of the cases or the cases, or we've not lost  
9 any case of relevance. That was a window into their  
10 belief that their campaign to avoid regulation was  
11 successful.

12 Q. So if a company launches a successful  
13 lobbying campaign to defeat legislation, that is an  
14 information operation?

15 A. By one of the documents that I can allude to,  
16 tobacco considered lobbying public relations. I  
17 wouldn't have called it that, but they called it that.  
18 Lobbying equals public relations. Public relations is  
19 one of the pillars of IO.

20 What I don't want to do is -- you asked a  
21 question talking about a leg of the elephant and I'm  
22 trying to answer talking about the elephant. It's  
23 what -- it's bringing together various measures of IO  
24 that makes it particularly successful, but not all.

25 Q. Let me parse through this with you. The

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1 proposition that people who smoke are at risk of  
2 getting disease has been known for generations; would  
3 you agree with that?

4 A. It was certainly in the early '60s starting  
5 to be more of a certainty. In '54 with some of the  
6 mice studies that came out, it was concluded by many  
7 then as irrefutable evidence that smoking causes or  
8 smoking can be linked to cancer or other related facts.

9 Q. Did you ever hear the phrase cancer sticks?

10 A. Yes.

11 Q. Do you know when that phrase first started  
12 appearing in literature in the United States?

13 A. Well, there was one researcher, and I have  
14 that document, there's one researcher referred to  
15 tobacco as a delivery means for nicotine. Later in  
16 that document, they talk about nicotine's addiction and  
17 later in that document, they talk about smoking's  
18 relation to --

19 Q. Doctor, with all due respect, that is  
20 completely nonresponsive to the question that I just  
21 asked you.

22 A. Okay.

23 Q. I asked you: Do you know when the phrase  
24 cancer stick was popular in the United States?

25 A. No:

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1 Q. Would it surprise you if I told you that  
2 cancer stick is the way people referred to cigarettes  
3 by slang well before World War II, would that surprise  
4 you?

5 A. Nothing would surprise me.

6 Q. Would it surprise you, Doctor, that most  
7 people by 1954 believed that cigarettes harmed you,  
8 could harm you, smoking cigarettes could harm you?  
9 Does that surprise you?

10 A. No.

11 Q. Have you known that most of your life?

12 A. Yes.

13 Q. When did you first learn that cigarettes were  
14 bad for you?

15 A. I concluded that when I watched people who  
16 were heavy smokers come up with, more than by random  
17 chance with related health diseases. Now, it was also  
18 concluded by tobacco long ago.

19 Q. Doctor, let's just stick with my questions if  
20 we can.

21 MR. HOEN: Brad, Brad, you cannot cut him  
22 off, okay?

23 MR. LERMAN: I can ask for responsive answers  
24 and that's what I'm going to do now.

25 MR. HOEN: Then hold on just a second.

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1 MR. LERMAN: I'm going to continue the  
2 deposition.

3 MR. HOHN: Brad, you cannot cut him off, and  
4 you've been doing it all day. The objections are to be  
5 made at another time, I can't make any objections right  
6 now, but you cannot cut him off.

7 MR. LERMAN: I have not. Ed, I have not been  
8 cutting him off and I think the transcript is going to  
9 show that and so will the tape.

10 MR. HOHN: The video is what I'm more  
11 concerned about.

12 MR. LERMAN: I want to continue with the  
13 deposition.

14 MR. HOHN: Let's take a break.

15 MR. LERMAN: No, I would prefer to continue  
16 through because we're working late now and I want to  
17 make sure that we get this done in two days.

18 MR. HOHN: We are now over an hour and we're  
19 taking a break whether you like it or not. I'm taking  
20 a break now.

21 MR. LERMAN: Okay.

22 THE VIDEOGRAPHER: The time is 3:22 p.m.,  
23 going off the record.

24 (Brief recess.)

25 THE VIDEOGRAPHER: Back on the record, the



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1 time is 3:39 p.m.

2 Q. Dr. Carter, isn't it true that numerous  
3 published articles and publicly available reports since  
4 at least the 1950s have noted that people who smoke are  
5 at risk of getting lung cancer? Isn't that true?

6 A. There has been a number of documents that  
7 have contended that and then there's been a number of  
8 documents that says that that's an inconclusive  
9 statement.

10 Q. Do you have any idea, again, you did not  
11 undertake a study of articles and press reports on that  
12 topic in the 1950s, did you?

13 A. That's true.

14 Q. Isn't it true that with respect to heart  
15 disease, smoking and heart disease, there are thousands  
16 of published and publicly available articles and  
17 reports since at least the 1950s that link smoking and  
18 heart disease? Isn't that true?

19 A. There's thousands of documents or hundreds of  
20 documents. There's lots of documents that talk about a  
21 relationship between smoking and health hazards. If  
22 that's what you're alluding to, then --

23 Q. Isn't it a fact that the medical community  
24 reached a consensus that cigarettes were associated  
25 with lung cancer and heart disease since at least

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1 1964? Isn't that true?

2 A. I believe that's true.

3 Q. Isn't it true that the textbooks in the State  
4 of Texas have been teaching students about the risk of  
5 disease associated with smoking at least since the  
6 1930s?

7 A. I don't know what the textbooks say.

8 Q. Is that because you haven't looked at the  
9 textbooks?

10 A. I haven't looked at the textbooks in Texas,  
11 no.

12 Q. Isn't it true that the surgeon general has  
13 required warnings to be put on every pack of cigarettes  
14 sold since 1966? Isn't that true?

15 A. I believe that's the date, yes.

16 Q. Isn't it true that as early as the 1960s,  
17 there were respected publications noting that  
18 cigarettes are addictive, publicly available  
19 publications? Isn't that true?

20 A. I would say yes.

21 Q. That's true, isn't it?

22 A. There's documentation, there's public  
23 research that -- I don't know what you mean by it's  
24 generally available. There's public research that  
25 could have been generally available that concluded that

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1 there's a relationship between smoking and health  
2 disease, you're right.

3 Q. That cigarettes are addictive?

4 A. There have been major contentions by some  
5 researchers that cigarettes are addictive.

6 Q. Isn't it true that the State of Texas and  
7 Texas health authorizes were publishing literature  
8 since the early 1950s remarking about the addictive  
9 properties of tobacco? Isn't that true?

10 A. I'm not sure.

11 Q. Is that because you haven't researched it?

12 A. I haven't researched that particular  
13 question.

14 Q. Isn't it true that addiction and addiction  
15 theory of tobacco has been pursued in scientific  
16 literature since the 1970s and that it's been discussed  
17 in the popular press extensively since that time?  
18 Isn't that true?

19 A. That's probably a fair characterization.

20 Q. Isn't it true that in 1974, the Texas  
21 Department of Health published a bulletin that said it  
22 is now clear that tobacco is more addictive than  
23 alcohol, marijuana or barbiturates? Isn't that true?

24 A. I don't know if that's true or not.

25 Q. Isn't that because you didn't research what

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1 the Texas Department of Health was saying about  
2 cigarettes?

3 A. I did not go in and research what the Texas  
4 Department of Health was saying about that particular  
5 question.

6 Q. Are you aware of the different definitions of  
7 addiction? Do you have knowledge of that?

8 A. I know that -- I don't have a scientific  
9 definition. I know there's levels of needs for  
10 nicotine. I know that from tobacco documents  
11 themselves. So if that's the same as levels of  
12 addiction, I'm not sure if that's the term you're  
13 referring to.

14 Q. What do you mean by needs of nicotine?

15 A. Tobacco research has, the source documents  
16 coming out of the tobacco industry themselves I'm  
17 referring to, talking about individuals having various  
18 levels of needs for nicotine to sustain the  
19 satisfaction they're looking for by smoking.

20 Q. And have you tested those documents that  
21 you've read against the other research reports that  
22 were carried out within the tobacco companies at the  
23 time?

24 A. I tested those, that statement with various  
25 other of the other research documents that were made

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1 available through discovery and found that that was not  
2 an uncommon statement, that there is a very definite  
3 individual need for various levels of nicotine in order  
4 to be satiated or satisfied.

5 Q. Is that a true statement or a false  
6 statement?

7 A. That's a true statement that it was contained  
8 in a tobacco industry research document.

9 Q. As a medical proposition or scientific  
10 proposition, is that a true statement or a false  
11 statement?

12 A. The fact that it was contained in the  
13 document that I read that had tobacco as its author is  
14 a true statement.

15 Q. Is the statement itself true or false?

16 A. I have no idea if it's true or false.

17 Q. Is that something that doesn't matter to you,  
18 whether it's true or false?

19 A. What matters -- it does matter that tobacco  
20 thought it was true.

21 Q. When you say tobacco thought it was true, how  
22 did you determine that the companies thought it was  
23 true? What process did you use to determine that?

24 A. One of the areas of information operation  
25 that's very important is to see if -- is to coordinate,

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1     synchronize and integrate your efforts. Tobacco as an  
2     industry did that as early as the early '50s. There's  
3     several documents that I could cite that alluded to  
4     them getting their act together or getting together as  
5     an enterprise or a group, and they met regularly over  
6     time to operate as an enterprise or a group. So that  
7     point I think is clear in the documentation I've looked  
8     at.

9             Q.     What evidence do you point to to make the  
10     statement that the tobacco industry believed this  
11     information about nicotine?

12            A.     Its own documents that have come out. I  
13     mean, there are documents with tobacco, various tobacco  
14     company letterheads that say it. That's what their  
15     research has concluded. That's where the term --  
16     that's where the term --

17            Q.     Would you agree with me that if a mid level  
18     manager writes a document on letterhead of the company,  
19     that doesn't necessarily represent the viewpoint of the  
20     company?

21            A.     If you look at the authors, we're talking  
22     about senior officials.

23            Q.     Who were they?

24            A.     I can't recite names but I can get those  
25     names.

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1 Q. What positions did they hold?

2 A. Some of them are CEOs, some of them are chief  
3 of research, some of them are -- these are authorities  
4 far below people -- or far above people who are what  
5 you would consider mid level.

6 Q. How do you know that?

7 A. Because some of the -- again, I can't recite  
8 off the top of my head, but some of these folks are  
9 known to be reputable, senior people in this industry.

10 Q. We'll look at that when we get into your  
11 affidavit.

12 Are you aware of the fact that the surgeon  
13 general has required rotating warning labels on  
14 cigarette packages? Do you know that?

15 A. No.

16 Q. Does the surgeon general require on cigarette  
17 packages a warning, "Caution, cigarettes are  
18 addictive"?

19 A. I don't smoke cigarettes. I think the term,  
20 I thought the term was hazardous to your health.

21 Q. And you're not aware then of what the  
22 warnings are on the packages?

23 A. I believe the warning said, "Caution,  
24 cigarettes can be hazardous to your health."

25 Q. And that's as much as you know about the --

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1 what the warnings say on every pack of cigarettes that  
2 a smoker buys, that's the extent of your knowledge?

3 A. I'm not sure what -- pick up a cigarette and  
4 I read the surgeon general -- in some words similar,  
5 the surgeon general -- I believe, "The surgeon general  
6 has determined that cigarette smoking can be hazardous  
7 to your health," something similar to that.

8 Q. In testifying as an expert in information  
9 operations in front of this jury, did you think it was  
10 important to know what exactly it says on every pack of  
11 cigarettes that's sold in this country?

12 A. It was important to know that a health  
13 warning is on that package.

14 Q. But not the content of the warning?

15 A. Not the exact wording of the warning.

16 Q. That is a detail which you don't need to know  
17 in order to render your information operations  
18 analysis?

19 A. I believe so.

20 Q. And knowing when the surgeon general  
21 determined that nicotine was addictive is something you  
22 don't need to know in order to render your information  
23 operations analysis?

24 A. No.

25 Q. Isn't it true that the surgeon general has



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1 tracked the volume and scope of research done on  
2 smoking and health, and has periodically reported with  
3 respect to the volume and extent of that research? Do  
4 you know that?

5 A. I believe so.

6 Q. Do you know that in 1994, there were 93,000  
7 reports on the biological effects of smoking that had  
8 been published? Did you know that?

9 A. It wouldn't surprise me, no.

10 Q. Have you read any one of them?

11 A. I've read various of them. I've read various  
12 reports themselves and certainly excerpts from reports.

13 Q. No, I'm not talking about the surgeon  
14 general's reports. I'm talking about the reports that  
15 the surgeon general references in his reports.

16 A. I read -- I can't answer whether the research  
17 documents from the various institutes that do research  
18 that were referenced in the -- that have been  
19 referenced in the surgeon general's report, but I  
20 likely -- I would assume they are. I would believe  
21 they are.

22 Q. Have you studied in any way the scientific  
23 debate regarding the causation of lung cancer as a  
24 result of smoking?

25 A. No.

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1 Q. Have you studied in any way the scientific  
2 debate regarding whether or not nicotine is an  
3 addictive drug?

4 A. I have followed the information, the pattern  
5 of information that has come out openly first and then  
6 later through discovery, a look into the internal  
7 knowledge, body of knowledge about the linkage of  
8 smoking and health.

9 Q. And the answer to my question is?

10 A. I just answered your question.

11 Q. Have you studied the scientific debate  
12 regarding the question of whether nicotine is an  
13 addictive drug?

14 A. I've looked at documents that relate to that  
15 so I'd have to get your definition of -- your question  
16 is very broad.

17 Q. Have you studied the debate, not inside the  
18 tobacco companies, the debate among scientists who  
19 study tobacco, have you studied the debate regarding  
20 whether or not nicotine is an addictive drug?

21 A. I have looked at documentation that has  
22 discussed the various points of view with regard to  
23 researchers on tobacco addiction and the reference to  
24 tobacco as a drug. I've looked at information in the  
25 course of my looking at whether this fits the pattern

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1 of information operations.

2 Q. I'm not talking about internally generated  
3 documents by the tobacco companies. I'm not talking  
4 about tobacco company research.

5 Have you studied the scientific debate among  
6 the scientists and researchers who study tobacco over  
7 the question of whether or not nicotine is an addictive  
8 drug?

9 A. I could only answer is that I looked at the  
10 documentation provided me and much of that  
11 documentation talks about scientific debate. If that's  
12 your definition of having studied it, then I've looked  
13 at that and I included that in my analysis. I don't  
14 know the scope of what study is.

15 Q. Does that fit your definition of study?

16 A. I was looking for a pattern of behavior.  
17 That was a pattern of behavior that I looked at, and  
18 yes, in looking at information -- whether it fit the  
19 paradigm for information operation, I looked at that.

20 Q. Let me break this out. Are you aware of the  
21 fact that there are scientists at universities and with  
22 various institutions and organizations who study  
23 tobacco and smoking and health? Are you aware of that?

24 A. Yes.

25 Q. Are you aware of the fact that over the years

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1 they have produced thousands and thousands of  
2 scientific reports?

3 A. That would not surprise me. I don't know the  
4 number.

5 Q. It would not surprise you that as of 1994,  
6 the surgeon general reported 93,000 such reports had  
7 been published. You already said that would not  
8 surprise you; is that right?

9 A. It would not surprise me that a large  
10 number. I don't know the number.

11 Q. Have you studied the debate, the discussion  
12 that has occurred within that scientific community over  
13 the question of whether or not nicotine is an addictive  
14 drug?

15 A. I have looked at documentation that alluded  
16 to the body of research that talks about tobacco  
17 addiction, calling tobacco a drug or not a drug, that  
18 has come out in the literature I've looked at. It is  
19 part of what I looked at. Did I take an independent  
20 study to look just at that research and all that  
21 research? I did not. I was looking for a process, a  
22 process in which the various legs of the information  
23 operation was applied, and I found it.

24 Q. Have you studied the -- have you analyzed the  
25 scope of research that was funded by the TIRC, later

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1 called CTR?

2 A. I've looked at it, a certain amount of it,  
3 yes.

4 Q. You've looked at the research?

5 A. I've looked at a number of the research  
6 documents and I've looked at internal and intracompany  
7 dialogue with regard to that research.

8 THE REPORTER: Did you say inter or  
9 intracompany?

10 THE WITNESS: Both inter and intra memoranda  
11 that referred to that research.

12 Q. Isn't it a fact that CTR is one of the  
13 largest private grant-giving organizations funding  
14 biomedical research in the United States?

15 A. I don't know where it fits in the order of  
16 size. I know it is, I know it gives grants.

17 Q. Isn't it a fact that CTR has over time funded  
18 1,380 separate projects?

19 A. I don't know the number of their funding.

20 Q. Is that because you haven't studied a  
21 bibliography of all the projects that have been funded  
22 by CTR?

23 A. I have not studied a bibliography of -- I  
24 know they do grants and I know that that is a  
25 clearinghouse for grants. I didn't count the number of

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1 reports that -- or research projects that --

2 Q. Isn't it a fact that CTR has funded over a  
3 thousand researchers who have published over 5,000  
4 articles?

5 A. I don't know the number that you're looking  
6 for. I don't know the number. I know that they --

7 Q. What review, what independent review did you  
8 do of the work product that had been funded by CTR?

9 A. Well, first of all, the work product funded  
10 by CTR is different than you're alluding to in my look  
11 at it. CTR or TIRC by the own admission of tobacco was  
12 created as a public relations firm -- a public  
13 relations entity, excuse me, an enterprise, with the  
14 express purpose of doing public relations and  
15 controlling research, and there's a very artful --  
16 within information operations, a very artful trade  
17 craft of making sure that the research or, as the  
18 internal memoranda refer to, bad science versus good  
19 science, which is very clearly bad science equating to  
20 research that did not come out favorable to tobacco,  
21 did not get published or got discredited when it did  
22 get published.

23 Q. Do you know how many of the 5,000 published  
24 studies that were funded by CTR were studies that found  
25 negative health consequences as a result of tobacco

1 use? Do you know?

2 A. I don't have the numbers.

3 Q. You don't know that, do you?

4 A. I don't have the actual numbers. You asked  
5 me the numbers. I don't have those actual numbers.

6 Q. Give me an estimate.

7 A. Repeat the question.

8 Q. Do you know how many of the 5,000 published  
9 studies from CTR came out with a negative conclusion in  
10 terms of tobacco's effect on health?

11 A. You're going to have to define negative. The  
12 standard word --

13 Q. Found cigarette smoking to be harmful.

14 A. Most of the research coming out of there  
15 found it inconclusive and that's been the base argument  
16 used by tobacco in its researchers internally for years  
17 and years. It is inconclusive as to there's a  
18 relationship.

19 Q. What is your basis for saying that most of  
20 the research that was funded by CTR, which includes  
21 1,380 projects, over 1,000 researchers, and 5,000  
22 publications, what is your basis for testifying under  
23 oath today that most of that research came out  
24 inconclusive?

25 A. I'm not putting a term on it as to whether

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1 it's most of it was inconclusive or not. I'm saying  
2 most of the data that the CTR and the TIRC funded that  
3 came out in regard to the relationship between smoking  
4 and health effects tended to use the word  
5 inconclusive. There was a great deal of research that  
6 was going to come out speaking more ominously about the  
7 cause and effects or the cause linking smoking to  
8 health effects that was suppressed, and comments in the  
9 internal memorandum that I looked at from tobacco found  
10 during discovery showed evidence of that. They were  
11 trying to steer, control, limit, hide, edit research.  
12 It's in there on its face.

13 Q. Dr. Carter, I understand you read Stanton  
14 Glantz's papers and his book, and I understand that  
15 you've read the Internet documents. Now I'm asking you  
16 a different question.

17 What have you done to make a determination  
18 regarding the actual research that came out of CTR?

19 A. I've looked at internal memoranda coming out  
20 of tobacco.

21 Q. Have you looked at what actually came out of  
22 CTR?

23 A. I've looked at boardroom references to a lot  
24 of that research.

25 Q. Is there a reason that you don't want to



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1 answer my question? Here's my question: Have you  
2 looked --

3 A. You asked me to get at information and I'm  
4 telling you I got that information.

5 Q. Let me ask you the question. If you don't  
6 want to answer it, just explain to me why you don't.

7 Have you looked at the actual product that  
8 came out of CTR funding? Yes or no.

9 A. No.

10 Q. How can you sit here and make a determination  
11 as to what that product consists of and you have not  
12 looked at it? How can you do that?

13 A. Because I read the internal memoranda coming  
14 out of the CEOs and their representatives that alluded  
15 to that research and in that internal memoranda, with  
16 CEOs and COOs and financial managers and planners and  
17 others in attendance, they alluded to the fact that  
18 they would eagerly suppress, manipulate, control,  
19 highly edit, destroy, discredit researchers in the  
20 pursuit of making sure that there was not conclusive  
21 evidence or general public belief that there was a  
22 linkage, an irrefutable linkage between tobacco and  
23 health effects.

24 Q. Those are a lot of allegations and you can  
25 continue to make those, Doctor, and we'll look at the

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1 documents that you think say that. But I want to ask  
2 you a different question.

3 In testifying as an expert before a jury and  
4 asking them to rely on what you have to say, isn't the  
5 best evidence of what CTR did a review of what actually  
6 came out of their funding, instead of reading somebody  
7 else's description of what they think came out of their  
8 funding?

9 A. I read CTR's description as reflected in  
10 internal memoranda of what they believe came out of  
11 that --

12 Q. Maybe you think you read that, but the point  
13 is you didn't read what actually came out of CTR, did  
14 you?

15 A. CTR is a confederation of the members of the  
16 tobacco industry, so when I read what that enterprise  
17 discusses in boardroom, in what they thought at that  
18 time was secret, internal, confidential, proprietary  
19 data, I relied on that.

20 Q. Are you aware of the contribution that the  
21 tobacco industry made to the AMA Education and Research  
22 Foundation? Do you know anything about that?

23 A. I know that they do a number of  
24 contributions.

25 Q. What is the AMA ERF program?

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1 A. I don't know what the ERF program is.

2 Q. You don't know what that project was, do you?

3 A. No.

4 Q. Do you know when it took place?

5 A. No.

6 Q. Do you know how much money was spent on it?

7 A. No, I don't.

8 Q. Do you know that CTR has funded three Nobel  
9 prize winners? Do you know that?

10 A. Wouldn't surprise me.

11 Q. Why wouldn't it surprise you?

12 A. Because they have a wide number of  
13 researchers on staff, as you just said, or they fund --  
14 not off staff, but that they fund.

15 Q. Do you know how much money the tobacco  
16 industry has funded universities such as Harvard, UCLA,  
17 Washington University to do research on smoking and  
18 health?

19 A. No.

20 Q. Is it your contention as an expert that that  
21 money was given to those universities for purposes of  
22 hiding scientific evidence regarding smoking and  
23 health?

24 A. I saw evidence in my study of the research  
25 strategies of the CTR and the TIRC that indicated they

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1 were very concerned about uncontrolled, bad science  
2 that may come out of that research and how to do damage  
3 control if it did and how to preclude it from coming  
4 out if at all possible to, how to select grants and  
5 programs that might be favorable, and if a research  
6 initiative showed evidence of potentially not being  
7 favorable, coming up with strategies to deal with it.

8 Q. What is the difference between the CTR  
9 funding through the grant process and the contract  
10 process, do you know?

11 A. I don't know.

12 Q. You do not know the difference between  
13 contract funding and grant funding as it applied to  
14 CTR?

15 A. No, I do not.

16 Q. Is that something that you think might be  
17 important before you render an expert opinion on CTR?

18 A. I don't think so.

19 Q. Do you know the difference, Doctor, between  
20 the -- do you know what the SAB is?

21 A. That's the Scientific Advisory Board, I  
22 presume.

23 Q. What is it?

24 A. It's a scientific board which meets to try to  
25 sit in judgment of what research documentation ought to

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1 be funded or not funded. Now, whether it's funded  
2 under grant or contract, I'm not sure.

3 Q. And how was the SAB, how did the SAB operate  
4 inside CTR?

5 A. It operated, by the evidence I've seen,  
6 collaboratively to try to select documentation that  
7 would render research findings generally favorable to  
8 tobacco. When there was evidence that findings either  
9 coming out of research or might come out of research  
10 that was not favorable, the CTR generally came up with  
11 strategies to deal with that. It starts with legal  
12 editing, heavy legal editing of research findings and  
13 there's documents, primary source documents to that,  
14 and everything from that to intimidation of  
15 researchers, to discrediting of researchers.

16 Q. Doctor, how many grantees of CTR had their  
17 research edited by tobacco lawyers?

18 A. This is a closed industry and the answer is  
19 only tobacco knows for sure the answer to that  
20 question.

21 Q. So in other words, you don't know the answer  
22 to that question?

23 A. I know that there was a regular pattern of  
24 editing. I've seen memoranda, policy memoranda that  
25 says that research will be looked at by lawyers and go

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1 through a legal review process before that research is  
2 released.

3 Q. In how many companies have you seen that  
4 memoranda?

5 A. I looked at this once I saw that tobacco was  
6 operating as an enterprise or a confederation, cabal,  
7 whatever you want to call it, that they operated  
8 consistently as a group. So in my analysis, I didn't  
9 try to say that one company had the occasion to do this  
10 more than others. As you know, the CAB is a group that  
11 meets, that represents each of the companies.

12 Q. So your expertise allows you to determine  
13 when it is that the actions of one company can be  
14 attributed to the actions of all companies; is that  
15 right?

16 A. I saw memoranda that talked about the  
17 strategy, goals and aims of CTR and TIRC as a group to  
18 control research. I saw documentation that says that  
19 the principal mission of the organization was not to do  
20 research, but to be a public relations firm. And  
21 that's on tobacco letterhead, signed by tobacco  
22 officials.

23 Q. What is it exactly that your expertise brings  
24 to the analysis of those documents? You read them, you  
25 draw conclusions from them based on what they say and

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1 then you spin back some kind of theory regarding  
2 wrongful conduct; is that basically what you're doing?

3 A. I was asked to look at the documentation with  
4 regard to does it fit a pattern, a correlation, could  
5 it correlate? Because the pattern of activity as  
6 evidenced by these documents equate to information  
7 operations and I found that pattern of activity.  
8 That's what I was asked to do.

9 Q. Can you identify a single instance in which  
10 the Scientific Advisory Board of CTR was directed not  
11 to make a grant that it felt was justified?

12 A. I could show you on CTR or TIRC letterhead  
13 where the policy was, the strategy was to try to steer  
14 grants to those kinds of researches and researchers  
15 that might produce favorable research. I saw policy  
16 statements on strategy that when research, what was  
17 called bad research, bad in the sense that it was not  
18 producing a favorable outcome for tobacco, was to be  
19 attacked, was to be hidden, was to be discredited or  
20 researchers discredited.

21 That's what information operation is, and I  
22 really don't think you really understand the discipline  
23 that I represent because you're talking about legs or  
24 subcomponents of it and research statistics, and I'm  
25 trying to explain to you a pattern of behavior, a

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1 discipline, an integrating strategy of all of those  
2 legs.

3 Q. Doctor, you're talking about a pattern of  
4 behavior without having any of the facts as to what the  
5 behavior was.

6 A. I have --

7 Q. Can you identify a single instance where the  
8 SAB was denied the ability to fund external research as  
9 it thought appropriate? Yes or no.

10 A. I just answered that question.

11 Q. No, I asked you if you could identify a  
12 single instance in which the Scientific Advisory Board  
13 was denied the ability to fund external research that  
14 it believed was appropriate. One specific instance.

15 Let me tell you what my question is not  
16 seeking. I am not seeking whether or not you read some  
17 policy document which would lead you to believe that  
18 that must have happened. I'm not asking you whether in  
19 your opinion based on your review of documents you  
20 think it must have happened because all the documents  
21 say it was going to happen. I'm asking you whether or  
22 not you have an observable, identifiable event where it  
23 did happen. Can you identify it?

24 A. This was a closed institution. If I -- if  
25 that kind of smoking gun statement had come out, it



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1 would have been devastating for tobacco. That's the  
2 reason I relied on the policy statements of those folks  
3 that the Scientific Advisory Board worked for and the  
4 policy statement said steer, control, limit, edit and  
5 do damage control on research.

6 Q. So the answer is you cannot identify a single  
7 instance and when it happened?

8 A. I can identify the policy statements that  
9 said make sure it doesn't happen or try to make sure or  
10 do damage control when it happens.

11 Q. Doctor, is it your testimony that marketing  
12 plans that are developed by a company to market a  
13 product should be made public?

14 A. I think there are certain documentation that  
15 probably is not to the benefit of the company to make  
16 public. It depends on where I sit.

17 Q. Isn't it true that in the ordinary course of  
18 corporate conduct, there are all kinds of documents  
19 that are generated that are sensitive, that are  
20 competitively sensitive, that are strategic and that  
21 are never released to competitors or to the public?  
22 Isn't that true in corporate America across all  
23 industries?

24 A. I don't know across all industries. I  
25 haven't studied all industries so I don't know what the

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1 pattern of all industries are. It's a very general  
2 statement you're making.

3 Q. Isn't it true that product design, research  
4 or marketing research is the kind of competitively  
5 sensitive research that companies across all industries  
6 routinely keep closed and to themselves?

7 A. When you've got a product that is purported  
8 to or you know is either defective or harmful, you have  
9 to institute in my judgment extra measures of  
10 protection that go beyond normal business practices. I  
11 think that was why we have a TIRC, CTR. I think that's  
12 why we have in some sense the science advisory boards.  
13 That's why we have enormous amount of money going to  
14 thwart regulation and oversight and control of this  
15 product.

16 Now, what is, quote, normal business practice  
17 is subject to some debate. The practices of this  
18 institute as I looked at it, which knew it had a  
19 defective product, defective product meaning a product  
20 that was harmful, and was saying publicly that that  
21 product was not harmful or that it was inconclusive  
22 that it was harmful, would have a reason to want to  
23 hide that information.

24 Q. What was the conclusion that the surgeon  
25 general reached with respect to causation in 1964?

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1           A.    I believe -- I have the document and I can  
2 read exactly. I believe the conclusion was that there  
3 is a relationship between smoking and health effects.

4           Q.    If there were independent -- let's do a  
5 hypothetical question. If there were independent  
6 scientists, no connection to the tobacco company, who  
7 in good faith in analyzing smoking and health came to  
8 the judgment that in fact causation had not been  
9 established, would that change your opinions as to the  
10 information operations as you've described them with  
11 respect to the tobacco companies?

12          A.    I don't think so, no.

13          Q.    It wouldn't matter whether it was true or not  
14 true?

15          A.    I didn't say it was true or not true. You  
16 said, you used the word had concluded. A lot of the  
17 research is inconclusive. The cottage answer that  
18 tobacco has hung its hat on for years is that the  
19 research is inclusive, and they've used that as a  
20 statement to say then it's not true until it's proven  
21 inconclusively. That's been their strategy. Data that  
22 comes out or research that comes out that generally  
23 concludes that it's conclusive is often targeted,  
24 discredited by tobacco and there's evidence of that in  
25 the documentation I looked at.

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1 Q. Are you a legal ethicist?

2 A. No.

3 Q. Are you an expert in the law?

4 A. No.

5 Q. Are you somebody who is expert in evaluating  
6 the appropriate function of in-house corporate counsel?

7 A. No.

8 Q. Can you identify a single piece of research  
9 that has been withheld in this case on grounds of  
10 privilege?

11 A. I believe I can.

12 Q. What?

13 A. There's various documents that are alluded to  
14 in internal memoranda that they had asked -- now,  
15 whether they were successful in withholding it or  
16 getting it out, but the intent of the strategy was to  
17 try to suppress it.

18 Q. Whether they were successful or not  
19 apparently doesn't concern your opinions, does it?

20 A. The attempt to use suppression of  
21 information, which is an element or leg or pillar of IO  
22 and therefore is additional evidence that an IO  
23 strategy was employed by tobacco, is what I was asked  
24 to look at.

25 Q. If a document is appropriately

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1 attorney-client privileged, is it appropriate therefore  
2 to keep it privileged and not release it?

3 A. That's a legal question that I can't --

4 Q. Which you are not capable of answering; is  
5 that right?

6 A. The definition of when a document meets the  
7 test of attorney-client I am not prepared to render an  
8 opinion on.

9 Q. If there are documents by lawyers discussing  
10 whether a privilege could be applied to scientific  
11 research and then ultimately the privilege is not  
12 claimed on that research, is that wrongful conduct,  
13 Doctor?

14 A. It can be. It depends. Did they attempt to  
15 claim it and under what reasons did they claim it?  
16 There's a pattern of behavior --

17 Q. Well, do you know --

18 A. -- in the tobacco industry in which an  
19 extensive amount of research was purposely run through  
20 legal review for the express purpose of claiming legal  
21 privileges.

22 Q. Do you know whether or not the privilege was  
23 ever claimed? Yes or no.

24 A. Yes.

25 Q. You know whether or not it was claimed?

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1           A.    I know that there's extensive documentation  
2 of what I looked at where the tobacco industry has  
3 claimed client privileges, legal privileges to retain  
4 documentation and keep it from being released.

5           Q.    With respect to scientific research, do you  
6 know whether or not claims of attorney-client privilege  
7 have been made? Yes or no.

8           A.    I can't be specific as in regard to whether  
9 it's scientific research, but information generally  
10 unfavorable has been run through legal review for the  
11 express purpose of attempting to claim that,  
12 successfully. I think scientific documentation has  
13 been a part of that.

14          Q.    You see, I have a problem with your  
15 testimony, Doctor, which is, I understand that you read  
16 documents that you think state a policy that this is  
17 what should happen. But then you testify as though you  
18 know for a fact that it did happen, and you haven't  
19 done the work to determine that, have you?

20          A.    I've done the work in the area that I've been  
21 asked to, my area of testimony: Was there a pattern of  
22 behavior attempting to influence, control, hide and  
23 destroy information as a pattern of behavior would put  
24 tobacco in a more favorable light? That pattern is  
25 there and that's what makes it information operations.

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1 Q. Doctor, I want to show you the first exhibit  
2 in this case, which is your affidavit.

3 (Exhibit-1 marked.)

4 Q. Do you have the document in front of you?

5 A. Yes.

6 Q. Do you recognize it?

7 A. Yes.

8 Q. Is this the affidavit that you previously  
9 testified was an affidavit that you prepared in  
10 connection with this litigation?

11 A. Yes.

12 Q. Was it executed on September 8th, 1997?

13 A. Yes.

14 Q. Doctor, I want to talk to you about on page  
15 5, I of your affidavit. Do you see paragraph 1, I,  
16 paragraph 1?

17 A. Uh-huh.

18 Q. It says, "The tobacco industry and tobacco  
19 companies purposefully used this tactic far beyond its  
20 proper application to material prepared in anticipation  
21 of litigation."

22 A. Right.

23 Q. What is your basis for making the statement  
24 that -- let me phrase it this way.

25 What is the work product doctrine?

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1           A.    I'm sorry?

2           Q.    What is the work product doctrine?

3           A.    I have no idea.

4           Q.    When is attorney work product appropriately  
5 withheld from discovery?

6           A.    I don't know.

7           Q.    What is the definition that you use for  
8 attorney-client privilege?

9           A.    I used the definition applied in the internal  
10 memoranda that said that we want to maximize or we want  
11 to liberally pass documentation through the attorney  
12 review in order to avoid discovery. Now, the  
13 adjectives and the adverbs used in that would make a  
14 reasonable person, an analyst, conclude that there was  
15 to be a very liberal application of that policy and  
16 that's documented.

17          Q.    I'm asking you to define the attorney-client  
18 privilege.

19          A.    I don't have a legal definition. I can tell  
20 you a lay definition because I'm not a lawyer.

21          Q.    What is your lay definition of  
22 attorney-client privileged?

23          A.    The privileged information that would be  
24 prejudicial to the case, it's privileged to the case,  
25 and it's confidential between the attorney and the



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1 client.

2 Q. Do you have any understanding at all as to  
3 when under the law it is appropriate to claim  
4 attorney-client privilege?

5 A. No.

6 Q. Do you have any understanding under the law  
7 as to when it is appropriate to claim work product  
8 protection for materials?

9 A. No.

10 THE VIDEOGRAPHER: Counsel, we're nearing the  
11 end of this tape. There are a few minutes left if  
12 you'd like to --

13 MR. LERMAN: Let's take a break.

14 THE VIDEOGRAPHER: Do it now?

15 MR. LERMAN: Yes.

16 THE VIDEOGRAPHER: This is the end of tape  
17 number 3 in the deposition of Dr. Ronald W. Carter.  
18 The deposition will be continued upon tape number 4.  
19 The time is 4:25 p.m., going off the record.

20 (Brief recess.)

21 (Exhibit-2 marked.)

22 THE VIDEOGRAPHER: Back on the record, this  
23 is the beginning of tape 4 in the deposition of  
24 Dr. Ronald W. Carter. The time is 4:40 p.m.

25 Q. Dr. Carter, I've handed you Carter

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1 Exhibit-No.-2. Do you recognize that document?

2 A. I believe this was one of the documents I  
3 looked at, yes.

4 Q. Is this the document referenced in the list  
5 of documents under I, paragraph 1 of your affidavit?

6 A. My document system was by date of the  
7 document. Here it is, 17th of -- this is 17 January,  
8 '85. So -- yes, this is one of the documents I looked  
9 at.

10 Q. In your affidavit, you described this  
11 document as the deadwood memorandum and you say in your  
12 affidavit that it, "Deals with the deep involvement of  
13 corporate counsel in decisions for removal of documents  
14 to storage and shipment offshore." Doctor, can you  
15 point to me the language in this document that you view  
16 to be improper?

17 A. Can I rereview the document?

18 Q. Uh-huh.

19 A. I'm sorry now, what is your question?

20 Q. Is there anything improper about reviewing  
21 files and determining what is no longer useful to be  
22 either shipped to storage or shipped somewhere else?

23 A. The term deadwood came to my attention when I  
24 found it in the taxonomy document, that I think it may  
25 have been a Brown & Williamson document or one of the

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1 tobacco documents, the coding documents, and deadwood  
2 was one of the areas in which they codified this  
3 category. So I traced the word deadwood, which I  
4 thought originally may have meant dead file,  
5 unnecessary file, but as I analyzed it a little more  
6 deeply, I think it was a -- I concluded that it was a  
7 category of documents that were significantly negative  
8 in their content that they wanted extra protection from  
9 discovery.

10 So when I came to this document, it was an  
11 additional evidence that I used to conclude that in  
12 fact the deadwood documentation was a coding system for  
13 classification of documentation. I had previously read  
14 other documents that said that we wanted certain  
15 documentation to be protected, extra levels of  
16 protection, and offshore shipping would be one of the  
17 techniques for that. I came to this document which  
18 alludes in the paragraph, I think it's on page 2, "I  
19 suggested that Earl tell his people that this is part  
20 of an effort to remove deadwood from files and that  
21 neither he nor anyone else in the department should  
22 make any notes, memorandum," whatever.

23 So by categorizing it as deadwood, by  
24 categorizing in taxonomy and other categories of  
25 documents that they want extra protection for, I think

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1 there's an analytical conclusion that could be made  
2 that these documents were shipped offshore for the  
3 express purpose of avoiding discovery.

4 Q. Is that a conclusion that you reached because  
5 you're an expert in information operations?

6 A. That's a conclusion, yes, and its techniques,  
7 of which hiding information, which is the category that  
8 I alluded to or categorized this in, is a principal  
9 undertaking.

10 Q. You don't know who wrote the taxonomy  
11 document, do you?

12 A. I would have to look at the document in  
13 terms -- it's one of the tobacco industry use  
14 documents. I don't know which of the -- and it's  
15 referred to in several documents. I don't know that  
16 that particular document has a title on the document.

17 Q. Do you know who wrote the taxonomy document  
18 offhand?

19 A. Not offhand.

20 Q. Do you know if it was written by somebody at  
21 Brown & Williamson?

22 A. It was written by one member of the tobacco  
23 industry. I don't have a use for it. It was a common  
24 filing practice in terms that was employed, or a common  
25 coding classification.

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1 Q. Do you know the circumstances under which the  
2 taxonomy was prepared?

3 A. I'm not sure what you mean by circumstances.

4 MR. LERMAN: I'm going to want this part of  
5 the deposition under seal. For the record, I want to  
6 state that the taxonomy document is a highly privileged  
7 document, attorney-client privileged document, was  
8 stolen from Brown & Williamson and should not be in the  
9 public domain. It should not form the basis of  
10 anybody's expert opinion, but the witness has seen it  
11 and referred to it and I'm going to show the witness  
12 this document without waiving any claim of privilege,  
13 but I want this portion of the transcript under seal,  
14 this exhibit under seal.

15 MR. HOHN: Just for the record, we have no  
16 problem with putting it under seal, but as for the  
17 waiver of the privilege, you would do any action that  
18 you take with that document at your own peril. From  
19 the State of Texas, we do not have an opinion one way  
20 or the other whether or not that's a waiver or not, for  
21 the record.

22 MR. LERMAN: Okay.

23 THE VIDEOGRAPHER: Does this pertain to video  
24 in any way?

25 MR. HOHN: Yes. You cannot disseminate the

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1 video to the public until or at such time that the  
2 court determines that the public dissemination of the  
3 document which he's about to refer to has been  
4 declassified as a privilege or the privilege doesn't  
5 apply or that it's been waived or that some other  
6 exemption applies. So do not disseminate the video to  
7 anybody in the public as a matter of fact. As a matter  
8 of course from your position here, you should only  
9 disseminate the video to lawyers for tobacco or for the  
10 State of Texas.

11 THE VIDEOGRAPHER: Mark it confidential,  
12 perhaps?

13 MR. LERMAN: You know what, I'm going to save  
14 us all the trouble. I'm not going to mark this as an  
15 exhibit. Let's move on without marking it as an  
16 exhibit. I'll just ask questions and see if we can get  
17 through this without creating the hassle, because I  
18 don't think it's necessary.

19 Q. Dr. Carter, if the taxonomy document was not  
20 written by anybody at Brown & Williamson, if the  
21 taxonomy was not written for any purpose connected to  
22 the business of Brown & Williamson, would that make a  
23 difference in your opinion about the deadwood  
24 memorandum?

25 A. The taxonomy document has been referred to in

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1 various company, in various literature that I reviewed.

2 Q. On the Internet?

3 A. I'd have to go back and look and see if I  
4 retrieved them from the Internet or if I got them from  
5 Texas. I can't recall exactly at this point.

6 Q. Do you know who wrote the taxonomy document?

7 A. The document is -- I'd have to look at it and  
8 refresh my memory -- was written within the tobacco  
9 industry to be used by the tobacco industry. Now,  
10 whether it's -- which one of the seven companies, I saw  
11 them acting in unison in their strategy so I evaluated  
12 by their actions, the collective actions.

13 Q. Now, with respect -- let's go back to the  
14 deadwood memo. With respect to the deadwood memo,  
15 Doctor, isn't it a fact that in this memo, the author  
16 says that he has taken a first pass at removing  
17 deadwood, and that research and development should do  
18 the same? Isn't that a fact?

19 A. Is that a direct quote?

20 Q. First paragraph of the second page.

21 A. The one that starts with, "I suggest that  
22 Earl"? Is that what you're reading?

23 Q. The sentence right above that.

24 A. Oh, I'm sorry. I'm sorry, now, what's your  
25 question regarding that statement?

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1           Q.   Isn't it a fact that Mr. Wells in that memo  
2           is indicating that he believes, not only himself but  
3           others in the company should decide what might be  
4           removed from the files?

5           A.   As I read this document in context with other  
6           documents that I've read, first of all, to identify  
7           these documents as deadwood puts it in a category  
8           that's distinguishable, distinguishable in its  
9           importance and the tobacco industry's resolve not to  
10          have it discovered. It seems in this memo that they're  
11          attempting to identify the deadwood category for  
12          various research documentation or other subjects. I  
13          don't know if other subjects meant within the area of  
14          research or other subjects, how broadly to interpret  
15          that, but certainly research documentation.

16          Q.   Have you ever reviewed the files that were  
17          collected as a result of this memorandum?

18          A.   No.

19          Q.   Do you know of what the deadwood files  
20          consist?

21          A.   I know through the taxonomy definition as  
22          being referred to as deadwood put it in a category that  
23          they wanted to protect or to at least to codify.

24          Q.   Here's my question to you: The documents  
25          that were identified as a result of this memo in



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1 January of 1985, have you ever seen a collection of  
2 those documents?

3 A. No. I would suspect that that document, much  
4 of that documentation has been shipped offshore or has  
5 been otherwise protected because that's what deadwood  
6 in many categories helped to identify, that category of  
7 documentation, a lot of it research, that tobacco  
8 wanted to make sure that I didn't see.

9 Q. And is that part of the factual basis that  
10 goes into your conclusions with respect to the shipping  
11 of documents overseas?

12 A. Yes.

13 Q. Do you know whether or not a collection of  
14 documents that was put together as a result of that  
15 memo is available, do you know?

16 A. I do not know.

17 Q. Has anybody told you whether it is or not?

18 A. No.

19 Q. Has the State of Texas told you?

20 A. No.

21 Q. Now, as of September 8th when you submitted  
22 this affidavit to the court for it to rely on in  
23 whatever it was that it was considering, would you have  
24 expected to be informed if in fact a collection of  
25 documents that was collected as a result of the

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1 deadwood memo had been provided to the state? Would  
2 you have wanted to know that?

3 A. My look at this was in terms of deciding  
4 whether there was a policy actions or intent to move  
5 any category of documentation away from discovery or  
6 further review, to try to set a pattern of behavior,  
7 whether it's destroying it, hiding it or removing it  
8 out of the legal boundaries. This seemed to be a  
9 technique that is -- deadwood, by called calling it  
10 deadwood met a category, met a certain category of  
11 importance. That said the intention was to consider  
12 these documents for removal outside of the United  
13 States, and other documentation that correlates to this  
14 when they are deadwood or other important documents,  
15 they will be removed from discovery.

16 Whether they're destroyed, whether they're  
17 protected by or attempted to be protected by privilege,  
18 or whether they're removed from outside of the state,  
19 that was part of the strategy. That's what I was  
20 looking for, is a pattern, a strategy and a pattern of  
21 behavior that said that they had employed that  
22 technique to hide information. Hiding information is  
23 one of the techniques or methods of information  
24 operations.

25 Q. Okay. Does it matter in your opinion, does

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1 it matter whether or not what's described in that  
2 memo -- well, strike the question.

3 Doctor, with respect to the Wells/Morini  
4 letter that you describe in paragraph D, --

5 A. I'm sorry, go ahead.

6 Q. In paragraph D, you criticize this document  
7 because it shows, "the extreme sensitivity for using  
8 the litigiously correct terms."

9 A. Uh-huh.

10 Q. Doctor, how many lawsuits were pending  
11 against the tobacco industry at the time that document  
12 was created?

13 A. I have no idea.

14 Q. How many lawsuits were pending against Brown  
15 & Williamson at the time that document was created?

16 A. I don't know.

17 Q. Is that relevant to your determination as to  
18 whether somebody's being overly sensitive regarding  
19 language that's being used in a document?

20 A. Well, documents in print live for a long  
21 time. I think the pattern here was to avoid any future  
22 scrutiny that they could be criticized for. So whether  
23 it was edited at a time there was ongoing litigation or  
24 in fear of future litigation, it was still heavily  
25 edited.

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1 Q. Doctor, would you agree that it's important  
2 to be clear and accurate in writing about the results  
3 of important research?

4 A. I believe so.

5 Q. Would you agree with me that where scientists  
6 are not clear and accurate in relating the results of  
7 their research, that that type of inaccuracy or  
8 unclarity could increase a risk of litigation?

9 A. I don't know. I think if the scientific  
10 community generated the document and it was a technical  
11 or scientific report like in law or in medicine or any  
12 other fields, you change terminology, you may change  
13 meaning or context or complete conclusions. So I'm --  
14 I was not taken back by the fact that there was some  
15 editing. I was interested in the fact that it was a  
16 legal review, and secondly, that the extent of the  
17 editing, the heavy editing and the many cases it looked  
18 like in my judgment they changed the context in some  
19 senses, at least the meaning of the context.

20 Q. What instances were those?

21 A. I'd have to get the document out and go  
22 through the document, if you want a page-by-page or a  
23 sentence-by-sentence, but if you look at the document  
24 yourself, you're going to see a very edited, edited  
25 document.

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1 MR. LERMAN: Let's mark it. Can we go off  
2 the record for a second?

3 MR. HOHN: Sure.

4 THE VIDEOGRAPHER: The time is 5:00 p.m.,  
5 going off the record.

6 (Discussion off the record.)

7 THE VIDEOGRAPHER: Back on the record, the  
8 time is a 5:01 p.m.

9 Q. What litigation was pending against Brown &  
10 Williamson in October 1984?

11 A. I do not know.

12 Q. In a products liability lawsuit, Doctor, do  
13 you know whether or not it very often is the case that  
14 research documents become the focus of litigation?

15 A. That would not surprise me.

16 Q. And in an industry that is being sued and is  
17 subject to lawsuits, would you agree with me that a  
18 lawyer plays an appropriate role for his client in  
19 making sure scientific research is written accurately  
20 and clearly? Would you agree with that?

21 A. Well, it depends on the definition of  
22 accurately and clearly.

23 Q. What's your definition of accurately and  
24 clearly?

25 A. I don't know that I have a definition beyond

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1 that. It's what the researcher and the conductor of  
2 the research concluded when -- and the way -- I happen  
3 to be a researcher and analyst in addition to being an  
4 information operator, so I'm very sensitive to heavy  
5 editing of my work, especially when it changes nuances  
6 or conclusions.

7 Q. But can you --

8 A. But the fact that it was done by a legal  
9 person as opposed to another researcher gives me  
10 concern.

11 Q. Can you see how it would be important to a  
12 company subject to product liability litigation to have  
13 its scientific research written as clearly and  
14 accurately as possible?

15 A. Yes.

16 Q. And would you agree with me that where people  
17 do not comply with that rule, where people are not  
18 precise in the way they write up their research  
19 reports, that it is appropriate for an in-house lawyer  
20 to discuss with them the importance of being precise  
21 and clear in their writing? Would you agree with that?

22 A. The only exception I take to your statement  
23 is if precise and clear is your logic or justification  
24 for changing in some cases the substance or the  
25 direction or the major points in the research, then

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1 you're changing the research. You're not making it  
2 clear. You're changing the conclusions or you're so  
3 sensitive about future litigation that you're heavily  
4 editing out portions of documentation.

5 Now, when I looked at that document, a number  
6 of documents, a variety of research gets edited, but I  
7 had seen evidence in the documentation that had been  
8 provided to me through discovery of a policy, a policy  
9 of passing it through legal editing for the express  
10 purpose of avoiding litigation. That is a root  
11 principle of hiding information or avoiding it from  
12 general scrutiny, which is a subset of information  
13 operations.

14 Q. Okay.

15 A. So that's why I singled that document out as  
16 one of several documents that showed signs of editing.

17 Q. Doctor, you state in the affidavit, at the  
18 top of page 6, I'm going back now to your affidavit, at  
19 the top of page 6, the first full paragraph, you use  
20 the phrase "based upon a reasonable degree of  
21 information operations probabilities." What does that  
22 mean?

23 A. Information operation is a discipline of  
24 employing the various subsets of hiding information,  
25 deceiving, influencing and whatever that we went

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1 through. The information warfare probabilities is an  
2 analytical term that I've used in the military to  
3 reflect that there's a strong analytical linkage  
4 between the information, the data that I was reviewing  
5 and the conclusions I reached. In other words, this is  
6 another way you might say it is this is highly  
7 conclusive or this is, analytically this is highly  
8 supportable. Probability is another way in which it's  
9 expressed.

10 Q. Who is it that determines what a reasonable  
11 degree of information operations probabilities is? How  
12 would I know whether or not that there is a reasonable  
13 degree of information operations probabilities?

14 A. In this case, you would ask the analyst.

15 Q. So the way we know it is by asking you?

16 A. And swearing me to testimony that what I'm  
17 saying represents my considered judgment.

18 Q. Is that the way, is that the only way that we  
19 could test that statement of yours, is by asking you  
20 and swearing you to tell the truth?

21 A. I don't know. That's one way.

22 Q. Are there any others?

23 A. (Gestures.)

24 MR. HOHN: You have to answer out loud. I'm  
25 sorry.



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1           A.    I don't know, I don't know what others you  
2 might want to employ, I'm sorry.

3           Q.    You say, "These activities have caused  
4 nonsmokers, both adolescents and adults, to initiate  
5 smoking."

6           A.    Right.

7           Q.    What research have you done to determine what  
8 causes adolescents to start smoking?

9           A.    The tobacco industry data that came out  
10 during discovery indicated that it was well-known by  
11 the tobacco industry that youthful smokers, that  
12 decisions on smoking are formed at about 14 years old  
13 and decisions on brand are formed at about 14 to 16  
14 years old. This is in their internal memorandum. It's  
15 referred to as preteen. It's referred to as formative  
16 years, and it's referred to by age as presmokers.

17                   The fact that many of the advertising  
18 campaigns are directed at youthful smokers, the habit  
19 of smoking or the tendency to smoke is still heavily  
20 prevalent in this group, so by the results of their  
21 efforts, they -- which they've targeted at both adult  
22 smokers, existing smokers and at adolescent smokers and  
23 at underaged smokers, they knew how important this was  
24 for their industry.

25           Q.    Have you undertaken any research into the

1 study of what causes adolescents to make the decision  
2 to smoke?

3 A. I've read the internal memoranda from tobacco  
4 where they discuss what causes adolescents to begin to  
5 smoke.

6 Q. The answer is you have not undertaken any  
7 separate research to answer that question; is that  
8 true?

9 A. I don't know what you mean by separate  
10 research. I've read --

11 Q. Have you read any studies where somebody sets  
12 out to study the issue why do adolescents smoke?

13 A. No, but I've read studies --

14 Q. I --

15 A. I've read references in studies alluded to in  
16 tobacco industry internal memoranda where they discuss  
17 it.

18 Q. Doctor, the answer is you have not read the  
19 studies. Are you aware of studies where the issue is  
20 by independent researchers why do adolescents choose to  
21 smoke? Have you ever read anything like that?

22 A. There's many studies out there associated  
23 with what works.

24 Q. Have you read them?

25 A. Not all of them.

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1 Q. Have you read any of them?

2 A. I've read excerpts of them. I read excerpts  
3 in order, as I looked at the internal memoranda --  
4 memorandum and saw why they were targeting this group  
5 and why it was that important.

6 Q. Doctor, isn't it a fact that in countries  
7 where tobacco advertising is banned, that there is no  
8 substantial effect on the rate at which people smoke?  
9 Isn't that a fact?

10 A. I'm not sure.

11 Q. Do you know in which countries tobacco  
12 advertising has been banned?

13 A. No.

14 Q. Have you read any studies that studies those  
15 countries where tobacco advertising had been banned?

16 A. No.

17 Q. Do you know any of the leading researchers in  
18 that area?

19 A. In these countries?

20 Q. In the area of studying the effect of  
21 advertising on the decision to smoke.

22 A. I know the documents. I don't know the name  
23 of researchers.

24 Q. I'm not asking you what you read from the  
25 2,000 or thousands of documents that you've read in

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1 connection with your testimony today. I'm asking if  
2 you have looked at the wealth of published information  
3 that studies the issue of what causes teenagers to  
4 choose to smoke?

5 A. As I mentioned to you earlier, I based my  
6 conclusion on the body of research that I have looked  
7 at.

8 Q. And it does not include what I just  
9 referenced; is that correct?

10 A. It references, it talks to those studies, but  
11 those detailed studies may not be included in that  
12 body. I'd have to go back and look at my notes or in  
13 my summaries. There's certainly internal memorandum  
14 that talk to it.

15 Q. Are you aware of a publication by the U.S.  
16 Department of Health and Human Services in 1994 that  
17 concluded that no longitudinal study of the direct  
18 relationship of cigarette advertising to smoking  
19 initiation has been reported in the literature? Are  
20 you aware of that?

21 A. I'm not aware of that particular statement.

22 Q. Are you aware of the many studies that have  
23 concluded that there is no evidence to suggest that if  
24 advertising were banned it would make the least  
25 difference in the propensity of children to smoke? Are

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1 you aware of the many studies that conclude that?

2 A. No.

3 Q. Have you read any of them?

4 A. I've read what I told you I've read.

5 Q. So the answer is then no?

6 A. I didn't say that was the answer. I said  
7 I've read the body of evidence, the body of data and in  
8 a lot of that data are data that allude to the effects  
9 of advertising on smoking.

10 Q. Now, how did you conclude in your expertise  
11 within a reasonable degree of information operations  
12 probability that the collection of deadwood documents  
13 caused nonsmokers to initiate smoking?

14 A. The conclusion was based on the fact that if  
15 you remove the evidence that points inconclusively,  
16 inconclusively to the fact that there's a relationship  
17 between smoking and health effects, that you will --  
18 it's one of the -- it's one of the bits of information  
19 that an informed presmoker or nonsmoker can use in  
20 making an informed choice. That was removed. It was  
21 removed for the express purpose that it would not be  
22 known to the general public.

23 Now, there is also a considerable amount of  
24 documentation I looked at that talked about the  
25 targeting of presmokers. There was even a category

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1 called formative years. I think the formative years  
2 category is like 16 to 18. There's studies that have  
3 been done that said 14 to 16 are critical years because  
4 that's when you get them to smoke and that's when they  
5 choose brand and they tend to -- so there's a lot of  
6 research that was done that was focused on these, on  
7 this youthful group.

8 Q. Doctor, can you identify a single individual  
9 who took up smoking as a result of the activities that  
10 are described on page 6 of that affidavit? Name a  
11 person. Can you do it?

12 A. I'm not in the -- my analysis did not require  
13 me to name target audience by name. I can name them by  
14 groups.

15 Q. Can you name a single Medicaid patient in  
16 Texas who took up smoking as a result of the conduct  
17 that's described on page 6?

18 A. As I mentioned to you, my study was to group  
19 people by either smoking or formative years or  
20 nonsmokers or presmokers as a group. I looked at it as  
21 a group, not to come up with individual names.

22 Q. You studied the effect that this had on  
23 particular groups? What did you do to study that?

24 A. I studied the internal memoranda that spoke  
25 to this group, this preadolescent, this preteen, this

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1 formative years, this 18 and under group as a target, .  
2 as one of the target audiences that they wanted to  
3 direct campaign strategies to. Not only in terms of  
4 where they placed the ads, in and around high schools,  
5 what target audience they were interested in, there was  
6 a study, I think it was Cooper Union University, a memo  
7 where they sent asking for their advice on how to  
8 design a package for kids. I don't know how you define  
9 kids, I define it as pretty young.

10 When you put that document with other  
11 documents where they define presmokers and youthful  
12 smokers as under 18, you start linking a pattern  
13 together and that's what I used.

14 Q. And that's what you do, you put documents  
15 with other documents; is that right?

16 A. I look for trends and patterns and  
17 consistencies and inconsistencies. I look for  
18 correlations or noncorrelations.

19 Q. Okay, and what scientific analysis did you  
20 apply to determine that any particular individual was  
21 caused to take up smoking?

22 A. I looked at, first of all, I looked at a  
23 campaign strategy by the tobacco industry to target  
24 that group to begin smoking. The fact that that group  
25 is beginning on a regular basis to smoke says that

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1 their strategy has been reasonably successful.

2 Q. Now, to determine whether somebody was caused  
3 to do something, wouldn't you need to know what else it  
4 is they know about smoking already? Wouldn't you need  
5 to study that?

6 A. I've looked at documentations, again,  
7 internal memoranda and other studies that have come  
8 out, that says that there are claims there are multiple  
9 things that may cause someone to smoke, but one of them  
10 is advertising associated with tobacco and a strong one  
11 is that.

12 Q. Wouldn't you need to know, for instance, what  
13 any adult nonsmoker already understands about smoking  
14 before you make a determination as to whether an action  
15 by the tobacco companies did or did not influence  
16 them? Wouldn't you need to know what they already  
17 knew?

18 A. I saw evidence in the documents that I  
19 reviewed that they already did know that their actions  
20 had a heavy impact on, that was being heavily  
21 successful. The Joe Camel --

22 Q. You and I aren't communicating. You're  
23 answering a different question.

24 In order to decide whether any particular  
25 individual is influenced by the conduct of the tobacco



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1 companies, wouldn't you need to understand what that  
2 individual already knows about smoking and health?

3 A. I'm not sure.

4 Q. You're not sure?

5 A. I'm not sure what any individual needs to  
6 know. You want to make a statement about an  
7 individual. I want to make a statement or I'm trying  
8 to answer a statement in the way I analyze it, and that  
9 is a grouping, age grouping of individuals.

10 Q. In the State of Texas, how many people, how  
11 many nonsmokers took up smoking because of the conduct  
12 you've described in the affidavit?

13 A. I don't know in numbers, but there's, a  
14 number have come out: A lot.

15 Q. How do you know?

16 A. Because I've looked at the data.

17 Q. Which data?

18 A. Their own research, their own data says this  
19 is a rich target audience. This is an essential target  
20 audience because this is where you get them hooked and  
21 keep them hooked. That's what their own research, the  
22 tobacco industry research has concluded. If we wait  
23 for them to get to 18, if we wait for them to get to  
24 21, which their own code said they would, then they  
25 have a much lower probability of hooking them. That's

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1 in their own internal documentation. So they've  
2 targeted this group because it's a lucrative group.

3 Q. As a result of the collection of deadwood  
4 memoranda in 1985, what information was deprived from  
5 the public? What did the public not know?

6 A. Any document -- well, that's the \$64,000  
7 question because if you executed the policy of moving  
8 it offshore, then the public wouldn't know. So how  
9 do -- I can't prove a negative. I don't know what I  
10 don't know about that documentation. I do know that it  
11 was a deliberate pattern, procedure which had the  
12 express purpose of hiding it from discovery, hiding it  
13 from litigation.

14 Q. How many Medicaid recipients in Texas took up  
15 smoking as a result of the conduct that you've  
16 described?

17 A. I don't know.

18 Q. How many Medicaid recipients in Texas  
19 refrained from quitting smoking because of the conduct  
20 that you've described?

21 A. I don't know.

22 Q. How many Medicaid recipients in Texas  
23 continued to smoke because of the conduct that you've  
24 described?

25 A. I don't know. You're asking for a number.

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1 Q. And you don't have one?

2 A. I don't have a finite discrete number to give  
3 you.

4 Q. Can you identify any particular individual or  
5 any particular identifiable group of individuals that  
6 you can say started smoking because of the conduct in  
7 your affidavit, that you've described in the affidavit?

8 A. Yes.

9 Q. Who?

10 A. I can tell you that the campaign strategy of  
11 tobacco was to target youthful smokers. I can say that  
12 they had a category, a grouping called formative years,  
13 preteen, junior adolescents. They had various names  
14 for them, kids, that was expressed in it, and they  
15 specifically targeted that group because it was known  
16 to be a lucrative group. That's the future generation  
17 of profit for industry. So it was a business  
18 decision.

19 Q. Are you aware of the antitrust laws? Do you  
20 know what they are?

21 A. No.

22 Q. Have you studied the application of the  
23 antitrust laws to any industry?

24 A. No.

25 Q. Are you aware of the history of the antitrust

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1 concerns that the tobacco industry has?

2 A. No, but I'd be happy to look at anything you  
3 might have on that and include it in my analysis.

4 Q. Well, Doctor, I mean, you've made your  
5 analysis unaware of those things; is that right?

6 A. I made my analysis based on the time from  
7 when I began until the time I was asked to submit my  
8 affidavit. I made my conclusions and my analysis based  
9 on the information that I had received to that point.  
10 What I'm saying is I'm ready to continue my analysis to  
11 see if any other documentation would point me into any  
12 other direction. I have not looked at that particular  
13 document at this point.

14 Q. Doctor, when you submitted this affidavit,  
15 you were prepared to have the court rely on it; is that  
16 right?

17 A. Yes.

18 Q. You had done everything that you needed to do  
19 to submit an affidavit that says what this affidavit  
20 says to the court; is that right?

21 A. I had looked at the data that was available  
22 to me to this point. There's lots of data out there  
23 that's not available to me and I would continue to look  
24 at it.

25 Q. Well, what is it? Is this affidavit

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1 something we should rely on --

2 A. Absolutely.

3 Q. -- or is it something that's still a work in  
4 progress?

5 A. The analysis -- the data upon -- the universe  
6 of data that one might look at is unavailable. It's  
7 unavailable by design. It's either been destroyed,  
8 it's been shipped offshore, it's been protected or  
9 claimed to be protected. Some of it has leaked out.  
10 Some of it has come out over the objections of the  
11 tobacco industry. As an analyst, I look at what I can  
12 find, I look at what I can see. But I can't look at  
13 what I can't see and there's known to be documentation  
14 that's not available. So all I'm saying is I will --  
15 I'd be happy to look at anything that you might have.  
16 I would be happy to open up my thinking again and  
17 rethink my conclusions if you have documentation that  
18 you think is important that I haven't looked at.

19 Q. Are you saying that the antitrust, the  
20 history of antitrust enforcement by the federal  
21 government of the tobacco industry is information that  
22 is unavailable to you?

23 A. I'm saying that I have not looked at that as  
24 a pattern area to this point. What I've looked at is  
25 concerns and internal memoranda that I had access to

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1 about regulation, about antitrust was alluded to, about  
2 other legal considerations and things that may harm  
3 tobacco. I looked at that in that context, but I did  
4 not go on to do a separate study on that subject.

5 Q. In fact, you're unknowledgeable about that  
6 subject, aren't you?

7 A. To the extent I'm unknowledgeable about what  
8 makes a lawn mower crank up, but I know the effects of  
9 it. The effects of it are what I was looking for.

10 Q. So you don't need to know it; is that what  
11 you're saying?

12 A. I was looking for a pattern of behavior. I  
13 found the pattern of behavior based on correlating  
14 information. So to the extent that I will continue to  
15 look, as time permits, I'll continue to look at  
16 documentation that I can find or is made available to  
17 me. I'll be happy to look at anything you want me to  
18 look at and include it in any analysis or modifications  
19 to the statement.

20 Q. Doctor, the question is: You don't need to  
21 know about the antitrust enforcement actions that have  
22 taken place over time with respect to the tobacco  
23 industry; is that what you're saying?

24 A. I don't know if I need to know at this  
25 point. I found a clear unambiguous pattern of

1 behavior.

2 Q. Let me turn to paragraph, on page 8 of your  
3 affidavit where it says "Distorting information."

4 A. Uh-huh.

5 Q. Number 1 under there says, "Internal  
6 memoranda and correspondence reveal a clear knowledge  
7 that nicotine is an addictive drug but public  
8 statements consistently deny that. "

9 A. Right.

10 Q. Do you see that?

11 A. Right.

12 Q. Doctor, isn't it true that addiction is a  
13 word that has different definitions?

14 A. I don't know. In the context of tobacco, I  
15 don't know that it has different definitions. It may  
16 have different degrees.

17 Q. Did the surgeon general ever change his  
18 definition of addiction over time, to your knowledge?

19 A. The -- what I can recall, and I'd be happy to  
20 go and refer to my notes or look at anything that you  
21 might want to show me, the surgeon general in some of  
22 his documentation said that you have, first of all,  
23 different nicotine level requirements in individuals.

24 Q. Surgeon general said that?

25 A. Well, that was borne out in internal

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1 documents, excuse me, it was borne out in internal  
2 documents.

3 Q. And as we know, if it says so in internal  
4 documents, it must be true, correct?

5 A. If it's said by those who have a position of  
6 authority and if it's said with some level of  
7 frequency, I think analytically, it's reasonable to  
8 conclude.

9 Q. And the fact that there's a huge body of  
10 independent scientific exploration of that issue that  
11 could be referred to, the fact that that's out there  
12 and that you don't refer to it, is consistent with the  
13 analytical rigors of what you've done?

14 A. Yes.

15 Q. Now, my question to you is --

16 A. The reason I say that is --

17 Q. Well, my question to you is, --

18 A. All right.

19 Q. -- sir, when you say that internal memoranda  
20 and correspondence reveal a clear knowledge that  
21 nicotine is an addictive drug --

22 A. Right.

23 Q. -- are you using a medical term of  
24 addiction? Are you using a common language use of the  
25 word addiction? How are you referring to it there?



1           A.    I'm referring to it in the context that I  
2   found this an internal memoranda. I found this with  
3   tobacco industry officials, both researchers and the  
4   management leaderships, to include the CEO meetings in  
5   which it was discussed that tobacco was addictive, and  
6   that pattern of usage, I don't know what they meant. I  
7   know they used the term.

8           Q.    All right. Well, let's look at your  
9   documents that you cite to support this proposition.  
10   Look at page 9, document A, "Nicotine is habituating."

11          A.    Uh-huh.

12          Q.    "Our industry is then based upon design,  
13   manufacture and sale of attractive dosage forms of  
14   nicotine." Do you see the word addictive in that  
15   document?

16          A.    First of all, this is not a document. This  
17   is a page or a short summation of a document, but in  
18   the paragraph you read from, I don't see the word  
19   addictive. I see the word habituating.

20          Q.    Do you see in your example in paragraph B,  
21   did you quote the language where the industry clearly  
22   acknowledges that nicotine is an addictive drug?

23          A.    Well, you can see what I quoted. This is an  
24   extract of a document.

25          Q.    Look at paragraph C.

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1 A. Right.

2 Q. It says, "Nicotine is a powerful  
3 pharmacological agent"?

4 A. Right.

5 Q. Is aspirin a powerful pharmacological agent?

6 A. Could be.

7 Q. Aspirin is addictive?

8 A. Could be.

9 Q. Aspirin is addictive?

10 A. Could be.

11 Q. You don't know?

12 A. Aspirin is a drug.

13 Q. Did I ask you if aspirin is a drug?

14 A. And drugs can be addictive.

15 Q. Drugs can be addictive?

16 A. Right.

17 Q. Are all drugs addictive, Dr. Carter?

18 A. I don't know.

19 Q. The point is you don't know, do you?

20 A. I don't know if all drugs are addictive.

21 Q. So you don't even know what the significance  
22 is of the quote that you have pulled out and put in  
23 your affidavit. You don't even know if it's  
24 significant for someone to say nicotine is a powerful  
25 pharmacological agent. You don't even know if it's

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1 significant, do you?

2 A. Definitely is significant.

3 Q. Because why, sir?

4 A. Because they have in external revelations,  
5 they've been very careful about linking, especially  
6 early on, '50s and '60s, linking, conveying the notion  
7 that tobacco is either addictive, habituating, an  
8 agent, a drug, any of these words, and in some senses,  
9 they're used freely, I don't want to say they're  
10 interchangeable, but they're words that are freely  
11 discussed in the literature about we've got to keep  
12 this kind of notion away from disclosure or away from  
13 public knowledge. There's a pattern of that in the  
14 stuff, in the documentation I looked at.

15 Q. Then read, read, the next thing you say is,  
16 "The above documents contrast markedly with" the  
17 following documents that you've listed under there.  
18 The first one says, "Almost 43 million American adults  
19 have quit smoking."

20 A. Uh-huh.

21 Q. Is that a true or a false statement?

22 A. It's a statement put out, I think it's  
23 generally accepted as true.

24 Q. That's a true statement?

25 A. I would accept that as a true statement.

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1 Q. Do you think the fact that 43 million  
2 American adults have quit smoking is relevant to the  
3 issue of whether or not nicotine is addictive?

4 A. I think that, first of all, being addictive  
5 does not mean you cannot kick the addiction, you cannot  
6 stop the addiction.

7 Q. Why does it mean? Why don't you define it?

8 A. Addiction means, in layman's terms, addiction  
9 means you have a need and a habit and a desire and a  
10 satisfaction from the product, and tobacco is one of  
11 those products, and tobacco plays off that need and  
12 that gratification and that satisfaction, because they  
13 know it's a drug, an agent, and because they've known  
14 that it's addictive, habituating and addictive.

15 Q. Well, that's your layman's definition of  
16 addiction; is that right? What you've just said, what  
17 you've just told us is your layman's definition of  
18 addiction; is that right?

19 A. Yes.

20 Q. You don't know whether that definition is  
21 consistent with the definition used by the attorney  
22 general, by the surgeon general, do you?

23 A. I know that --

24 Q. This is a yes or no question. You do not  
25 know whether your layman definition is consistent with

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1 the definition that is used by the surgeon general of  
2 the United States?

3 A. That's true.

4 Q. And you do not know whether the definition  
5 you just gave is consistent among the scientific  
6 literature as it existed in 1954, do you? Yes or No.

7 A. Analytically I can conclude that it does. If  
8 you've got medically trained staff in industry using  
9 the word addictive and you've got a medically trained  
10 surgeon general using the word addictive, I think a  
11 reasonable person would conclude that they have a  
12 common definition of the terms.

13 Q. When did the surgeon general find nicotine  
14 was addictive?

15 A. I'm not sure if that was part of the '64  
16 surgeon general report. The question is when, you  
17 know, when did he find versus when did he -- when did  
18 it come out in the surgeon general's report? I'm not  
19 sure which one you're -- -- I believe it came out in  
20 the '60s. When he personally concluded it, I don't  
21 know.

22 Q. Okay. Let's take a look at the next  
23 paragraph where you talk about discrediting individuals  
24 who attempt to bring unfavorable information forward or  
25 their research results.

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1           A.    Uh-huh.

2           Q.    The first document that you list in support  
3 of that conclusion is a document from the stationery of  
4 Leonard Zahn? Who is Leonard Zahn?

5           A.    I'd have to look at the document.

6           Q.    You don't know who Leonard Zahn is?

7           A.    I'd have to look at the document. When I  
8 made that statement, I had the document in front of  
9 me.

10           MR. LERMAN: Let's go off the record for a  
11 second.

12           THE VIDEOGRAPHER: The time is 5:39, going  
13 off the record.

14           (Discussion off the record.)

15           (Exhibit-4 marked.)

16           THE VIDEOGRAPHER: Back on the record, the  
17 time is 5:40.

18           Q.    I've handed you what's been marked as Carter  
19 Exhibit-4. Is that the document that is referred to in  
20 paragraph A on page 10 of your affidavit?

21           A.    Well, first of all, this version of the  
22 document is lot less readable than the document I  
23 looked at. As a matter of fact, this document almost  
24 hurts my eyes to look at it. Is there a copy of it  
25 that's --

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1 Q. This is what I can tell you, Dr. Carter, that  
2 this is the copy that I made from your documents that  
3 you provided to me through your counsel.

4 A. Uh-huh. I can hardly read a word on this  
5 page. I don't know, maybe I've got a terrible version  
6 of the thing, but I can hardly read a word on this  
7 page. The document that I looked at was better than  
8 this. So I don't know if other documents -- a better  
9 version is -- is mine as bad as yours?

10 MR. HOHN: Yeah.

11 A. A lot of these documents obviously are third  
12 generation Xeroxes.

13 Q. Do you know who Henry-Tom is?

14 A. Not without going through the document a  
15 little bit here.

16 Q. This is a document that you have provided to  
17 the court on September 8th?

18 A. Uh-huh.

19 Q. You also provided to us in a disclosure  
20 statement, you cited this document on September 20th?

21 A. Right.

22 Q. You have no present recollection as to who  
23 Henry-Tom is?

24 A. I have no --

25 MR. LERMAN: Is there writing on that

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1 document?

2 MR. HOHN: Yeah, it's just a better readable  
3 document.

4 MR. LERMAN: Let the record reflect that  
5 we're handing Dr. Carter a more legible copy of what  
6 we've marked as Carter Exhibit-4.

7 THE WITNESS: I presume you want me to look  
8 at the document?

9 Q. My question to you is: Who is Henry-Tom and  
10 who is Leonard Zahn? You told me you needed to look at  
11 the document to refresh your recollection, so I'm  
12 waiting to hear your answer.

13 A. Obviously Leonard Zahn is referred to here as  
14 Leonard Zahn Associates. I'd have to go back over and  
15 see to what extent he is affiliated, but he is  
16 affiliated with the tobacco industry, as are many  
17 officials. So I'd have to cross-reference to find out  
18 exactly who they are.

19 Q. Who is Henry-Tom?

20 A. Again, the same.

21 Q. The answer is you don't know?

22 A. The answer is I can't recall from looking at  
23 this document without cross-referencing to -- there's a  
24 document that helps to cross-reference names, but when  
25 I looked at it before and included it in my testimony,



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1 I was certain that these are officials of the tobacco  
2 industry in some capacity, either in an advisory or --  
3 but right now without going back over it, I can't  
4 recall from memory.

5 Q. You cite this document as proof that it  
6 recounts an effective discrediting of Dr. Homburger.  
7 Who is Dr. Homburger?

8 A. Dr. Homburger according to this memorandum  
9 was an individual who was about to or trying to, as I  
10 recall, I haven't read it in complete context and I'm  
11 willing to do that --

12 Q. Fine. Read it and let's get the answer.

13 A. Okay.

14 Q. Dr. Carter, who is Dr. Homburger?

15 A. As I said before, until I get my  
16 cross-references of persons, these are two officials  
17 that are associated with the tobacco industry in some  
18 authoritative capacity. I know that when I looked at  
19 the cross-referencing of personal names, that was the  
20 case. I just can't recall it off the top of my head  
21 right now.

22 Q. What was the --

23 A. So --

24 Q. What was the issue that Dr. Homburger was  
25 going to be reporting on as described in the memo, do

1 you know?

2 A. The implication of the memo here, which was  
3 supported by other documents that I looked at, that  
4 there was a pattern of trying to suppress scientific  
5 information, and I've alluded to that. That's been  
6 affirmed in other tobacco industry researchers who have  
7 provided information on attempts to try to suppress  
8 information or to suppress research.

9 Q. What kind of research was Dr. Homburger  
10 doing?

11 A. General categories of research that was of  
12 concern to CTR, so it was tobacco research in some  
13 capacity or form. Again, I think it's referenced in  
14 my, as I looked at what particular research department  
15 Dr. Homburger worked in, I'd probably be able to make a  
16 more informed decision on that. He was a researcher  
17 about to -- who had been knowledgeable of research, was  
18 about to come out and make a statement in the public  
19 about the deliberate attempts by tobacco to suppress  
20 information on scientific information. Consistent with  
21 an operation research strategy of suppressing  
22 information or protecting information in this case,  
23 there was a preemptive attack, according to this  
24 memorandum, to make sure he didn't do that --

25 Q. Okay. Let me ask that --

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1 A. -- and it had that effect.

2 Q. You met with Mr. Hohn on Thursday and on  
3 Friday to prepare for this deposition; is that right?

4 A. Yes.

5 Q. That was two days ago and yesterday, correct?

6 A. Yes.

7 Q. And you spent about six hours each day with  
8 him, correct?

9 A. Right.

10 Q. During the course of your discussions with  
11 Mr. Hohn, did he mention to you that we might actually  
12 go through the affidavit and your expert disclosure as  
13 part of what we asked you about today?

14 A. He said there are many techniques at getting  
15 information or talking to a witness.

16 Q. Did he mention that we would probably --

17 A. And this might be one of them.

18 Q. Did you go through your affidavit with  
19 Mr. Hohn?

20 A. Yes.

21 Q. So during these meetings, you went through  
22 the affidavit with Mr. Hohn yourself; is that right?

23 A. No, I reviewed the documents that were a part  
24 of my affidavit to make sure that numerically I could  
25 find them in some sort. The parts of the documentation

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1 that I wanted to refer to quickly, for sake of time I  
2 highlighted. The fact that it was an internal  
3 memoranda I highlighted.

4 Q. And the purpose of this deposition you  
5 understood was to inquire about your expertise and the  
6 facts on which you relied on; isn't that right?

7 A. Right.

8 Q. Now, here is one of maybe 20, 25 documents,  
9 and I haven't counted, that are referenced in your  
10 affidavit specifically and you don't know anything  
11 about who Leonard Zahn is, other than he's affiliated  
12 with tobacco, or who Henry-Tom is, other than that he's  
13 affiliated with tobacco, or what work Freddy Homburger  
14 was doing, other than this was some tobacco research.  
15 That's the extent of your knowledge as you testify here  
16 today on the 27th of September?

17 A. I've asked you to allow me to cross-reference  
18 by the name references I have on these officials. They  
19 are officials or they represent the tobacco industry.  
20 Dr. Homburger was researching data within the tobacco  
21 industry, was about to talk as an insider to that  
22 industry about their efforts to, he was about to come  
23 out and talk about influencing research and suppressing  
24 research.

25 Q. That's your understanding, is that

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1 Dr. Homburger was about to talk about the suppression  
2 of research?

3 A. The document says he was to have a news  
4 release with them, he was to tell the press that the  
5 tobacco industry was attempting to suppress important  
6 scientific information about the harmful effects of  
7 tobacco. He was going to point specifically to the  
8 CTR. I'm reading from the document.

9 Q. That's the extent of your knowledge on this  
10 incident?

11 A. Well, on page 2, there's dialogue in the  
12 memorandum about the industry's concerned about  
13 Dr. Homburger in fact having this news conference and  
14 revealing this information, and they were able to get  
15 the press release called off under some pretense of  
16 scheduling difficulties in the press room. And then it  
17 says, "P.S. I doubt if you or Tom will want to retain  
18 this note," which is marked confidential memorandum,  
19 which tells me as an analyst, this is not an action  
20 that they want to be credited with. This kind of  
21 action to suppress or distort or discredit researchers  
22 is a pattern of behavior I see through the literature  
23 or through the documentation of the industry.

24 Q. And you're quite confident making those  
25 accusations and allegations and drawing those

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1 conclusions, although as you sit here right now, you  
2 don't know who Leonard Zahn is, who Henry-Tom is, what  
3 Homburger's research was or who Homburger was in  
4 particular?

5 A. As I mentioned to you before, I made these  
6 conclusions based upon reviewing thousands of  
7 documents, of which I've cited 32 in here as examples.  
8 In those thousands of documents, there are many names,  
9 there are many positions, there's many industries. I  
10 just ask you not to ask me, to hold me accountable for  
11 memorizing every name of every official over 40 years.  
12 When I made the conclusions, I went and looked at the  
13 cross-reference and I made it with an understanding of  
14 who the two gentlemen were.

15 Q. Now, document C that's listed there is a Wall  
16 Street Journal article concerning alleged intimidation  
17 of Dr. Jeffery Wigand. What exactly have you -- what  
18 have you determined that Brown & Williamson did in that  
19 regard?

20 A. In regard to trying to discredit Jeffrey  
21 Wigand? Is that the question, sir?

22 Q. My question is: What facts have you  
23 determined are true with respect to this?

24 A. I'm sorry, "this" being this statement?

25 Q. Uh-huh.

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1           A.     Jeffrey Wigand, as you know, is a lead  
2 researcher with Brown & Williamson. He had access, he  
3 was given access or he had access to a substantial  
4 amount of documentation that showed the attempts of  
5 tobacco industry to distort or hide or manipulate the  
6 results of the research. He brought that out. He  
7 tried to bring that out. The tobacco industry lawyers  
8 attacked him claiming that as a condition of employment  
9 he signed a nondisclosure oath that said he would not  
10 reveal internal privileged information. He did that.  
11 He did that anyway. In that revelation, he talked  
12 about a deliberate pattern that very much fit the  
13 pattern of information operations in the tobacco  
14 industry's attempts to try to distort, hide, influence,  
15 obliterate information.

16                 Once -- I saw this article near the end of  
17 my -- because it's a fairly recent article, near the  
18 end of my research and it was interesting how the  
19 Brown & Williamson documentation revealed that pattern  
20 of behavior. So they've taken personal attacks at  
21 him. They've claimed that he signed, he swore that he  
22 would not reveal this kind of information. They've  
23 assaulted him for that. They've tried to suppress his  
24 testimony. That's pretty intimidating.

25           Q.     You mean in court they've tried to enforce a

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1 contract?

2 A. If the information you're setting on can be  
3 led to manipulation, persuasion, maybe even to a  
4 criminal extent, I'm not a lawyer so I don't know where  
5 that line is crossed, but apparently he felt he had a  
6 higher calling than what was in the contract.

7 Q. And so is the enforcement of a contract  
8 vigorous personal attack and intimidation?

9 A. They tried to discredit him. They tried to  
10 attack his conclusions. They tried to deny that the  
11 documentation he was alluding to represented official  
12 B&W policies and systems or programs. I think that's  
13 pretty intimidating. Now, if the question is did they  
14 have a noble cause in doing that, that's up to the  
15 sides in the litigant. He felt he had a higher calling  
16 to reveal this information and he was assaulted  
17 aggressively for it.

18 Q. Is that the extent of your knowledge on the  
19 intimidation and vigorous personal attack?

20 A. Later, I've read some testimony that  
21 Dr. Wigand made in which he talked about threats to his  
22 family.

23 Q. Were any of those threats -- I'm not even  
24 going to get into it with you, Doctor. You don't know  
25 the facts behind you, do you? You know what you read



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1 in his testimony,; is that right?

2 A. I know what he read in his testimony --

3 Q. And you know what you read in the Wall Street  
4 Journal; is that right?

5 A. I know what he read in the testimony, and the  
6 Wall Street Journal and other documents that have come  
7 out that characterized Dr. Wigand.

8 Q. Looking at the next section of your affidavit  
9 on page 10, "Influencing information," you say there  
10 that, "A primary objective of the tobacco industry and  
11 the tobacco companies is to stay in business"?

12 A. Uh-huh.

13 Q. Is that a unique objective to the tobacco  
14 industry?

15 A. No.

16 Q. You say that the tobacco industry and the  
17 tobacco companies have induced and reinforced attitudes  
18 and behaviors favorable to the objectives of the  
19 tobacco industry?

20 A. Yes.

21 Q. Are they the only industry in America that's  
22 tried to do that?

23 A. I haven't looked at the extensive number of  
24 industries, but this one, I was looked -- I was asked  
25 to look at whether their behavior fit the pattern of

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1 information operations and it did. That's what I'm  
2 concluding. I think it went beyond normal business  
3 practices.

4 Q. One of the patterns of information operations  
5 is they wanted to stay in business and reinforce  
6 favorable attitudes toward their industry?

7 A. One of the -- when you conduct information  
8 operations, you have to have a goal. The goal could be  
9 defeating an enemy force, the goal could be business  
10 share, it could be profitability, but you have to have  
11 a mark on the wall as to what we're trying to  
12 accomplish. The primary objective of the tobacco  
13 industry as cited in the documents I looked at, and  
14 they said it very clearly, was to stay in business and  
15 compete for market share.

16 Q. And that's based on the document you  
17 reviewed?

18 A. Right.

19 MR. HOHN: This might be a good time for a  
20 break?

21 MR. LERMAN: Fine, let's take a break.

22 THE WITNESS: Thank you.

23 THE VIDEOGRAPHER: The time is 5:39, going  
24 off the record.

25 (Discussion off the record.)

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1 (Brief Recess.)

2 THE VIDEOGRAPHER: Back on the record. The  
3 time is 6:14 p.m.

4 Q. Doctor, looking at page 11 of your affidavit,  
5 do you see paragraph B where you list a document there?

6 A. Paragraph B on this?

7 Q. On page 11.

8 A. It starts, "Transcripts."

9 Q. "Transcripts of remarks delivered by an  
10 unnamed Tobacco Institute spokesman."

11 A. Uh-huh.

12 Q. When were those remarks delivered?

13 A. The document that I -- the document was  
14 marked 1981, I don't know how old the document was when  
15 it was marked.

16 Q. To whom were the remarks delivered?

17 A. I don't know the forum.

18 Q. Do you know that they were delivered?

19 A. I don't know.

20 Q. You do not know if this speech was actually  
21 given?

22 A. That's correct.

23 Q. That doesn't matter to you?

24 A. I know that the individual who was giving  
25 this speech represented the tobacco industry. It came

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1 out in discovery from the tobacco industry. I know the  
2 speech represents a strategy that the official giving  
3 the speech was to articulate. Now, whether the  
4 strategy was actually articulated was not as important  
5 to me as the fact that the strategy existed.

6 Q. Your affidavit under oath says this is a  
7 transcript of remarks delivered by an unnamed Tobacco  
8 Institute spokesman. You've just testified you're not  
9 sure whether they actually were delivered.

10 A. The intent was to deliver. It was written as  
11 a speech to be delivered.

12 Q. Okay, and you're not --

13 A. I made the analytical judgment that it was  
14 delivered.

15 Q. You're not sure whether or not, you're not  
16 sure to whom it was delivered if it was delivered at  
17 all?

18 A. Or that it wasn't delivered.

19 Q. Okay, and in terms of the strategy that's  
20 enunciated in this 23-page document, was there anything  
21 illegal in it?

22 A. Not in this document alone.

23 Q. Is there anything unusual about an industry  
24 wishing to change public opinion or reduce public  
25 pressure that is on it?

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1           A.    Depending on the methods employed. As a  
2   general strategy of shaping public opinion, no, but if  
3   they employed methods or techniques in employment of  
4   that, could be.

5           Q.    This document of course didn't outline any  
6   improper techniques, did it?

7           A.    This document was never intended to stand  
8   alone in my analytical conclusion.

9           Q.    Who is Paul Hahn?

10          A.    Again, I'd have to refer to my  
11   cross-reference on personalities, but I think he's one  
12   of the CEOs.

13          Q.    And of what company?

14          A.    Again, I'd have to reference my documents in  
15   terms -- there's seven companies involved and their  
16   CEOs changed regularly or with some degree of  
17   regularity. I'd have to reference that.

18          Q.    Now, you say that in paragraph C of the  
19   affidavit, "CTR functioned far more effectively as a  
20   source of influence than as a research body." But  
21   haven't you already testified that you have not  
22   examined the research that was the result of the grants  
23   from CTR?

24          A.    What I've entered into testimony and what I  
25   looked at was internal documents as to the goals and

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1 purposes of the TIRC, and in those documents, they  
2 refer to themselves as a public relations  
3 organization. They placed Hill & Knowlton in charge as  
4 secretary on the executive staff, but by their own  
5 statements, they were organizing a public relations  
6 organization.

7 Q. So this document, document C, describes CTR  
8 as a public relations organization?

9 A. The document that I referred to here is --  
10 has strong language in it that says that they were  
11 creating --

12 Q. A public relations organization?

13 A. -- an organization that was principally aimed  
14 at public relations.

15 Q. Let me show you what I think is that document  
16 and you tell me if I'm right.

17 (Exhibit-5 marked.)

18 Q. Have you seen that document before?

19 A. Let me look at it, because my copy I had  
20 marked up where I wanted to make that salient point or  
21 where that statement came out, so I'll need a few  
22 minutes to refind it.

23 It's not the document I was referring to.  
24 Let me go back over, let me go back over and look --  
25 there's documentation that came out at this exact

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1 period of time that recorded the initial meetings of  
2 the origins of the TIRC in which it corroborated what  
3 I'm saying, that the intent of the organization was  
4 principally focused on damage control with regard to  
5 the Wynder documents on cancer in rats and that this  
6 organization was formed fundamentally for public  
7 relations.

8 Q. Let me ask you this question, Dr. Carter.  
9 Have you seen this document before, the one I've handed  
10 you?

11 A. Let me look at the cross-reference. The  
12 answer is yes. In the context of how I categorized it,  
13 give me a moment to reset this one. The context that I  
14 put this in is that this document was evidence of what  
15 was intended to be the public purpose, the public  
16 exposed purpose for why we're creating this  
17 institution. While at the same time, I put this in to  
18 show the hypocrisy, I'm going to say this about the  
19 noble, honorable objective aims of this organization,  
20 while other internal memoranda existing at the same  
21 time that was not to be released, was never intended to  
22 be released, discussed this organization as a public  
23 relations -- principally a public relations  
24 organization.

25 Q. All right. Let's start from ground zero.

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1 First of all, I take it what you're saying is that this  
2 document, Carter-5, does not indicate or stand for the  
3 proposition that CTR at least does not stand for the  
4 proposition that TIRC, rather, was formed principally  
5 as a public relations organization; is that right?

6 A. This document establishes my line of  
7 analytical reasoning that says that we're going to say  
8 something in public, noble, accepted by the public  
9 without question, and then we're going to do something  
10 in private. This happens to be the public statement  
11 that the private statements disagree with.

12 Q. Really? Was this statement released to the  
13 public?

14 A. It was stamped confidential and the document  
15 was not intended to be released but it represented a --  
16 in my analytical judgment, it represented a document to  
17 represent the aims that would go to the public.

18 Q. So in your analytical judgment, this document  
19 should not be taken at face value?

20 A. This document should not be taken at face  
21 value in its fullest context in terms of what was the,  
22 what was the important reason at that time to create  
23 this institution, this organization or this  
24 enterprise.

25 Q. So your analysis, your expertise allows you



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1 to determine when documents are telling the truth and  
2 when they're not telling the truth; is that about it?

3 A. No, absolutely not. But when I see this  
4 document dated in the 1954 time frame, which was  
5 generated or was created at the same time that the  
6 Wynder documents or Wynder reference that talked about  
7 rats and cancer or tar and cancer, caused them to have  
8 a reason to come together. In their internal  
9 memorandum, they talked about the need to create an  
10 organization and that internal memorandum said, you  
11 know, we ought to put research in the title. Putting  
12 research in the title will give it a certain amount of  
13 credibility, not because it was intended principally to  
14 do research, but because someone thought it was  
15 important for credibility to put it in the title.

16 They also go on and include Hill & Knowlton  
17 on the staff, relied on them heavily in the creation of  
18 this organization, and referred in that internal  
19 memorandum specifically to creating this organization  
20 for purposes of public relations. Based on that, I  
21 have concluded that the original intent in terms of why  
22 they created it and when they created it, principally  
23 evolved from damage control on the negative study that  
24 came out in '54 and the need to be prepared to deal  
25 with it in the future.

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1 Now, what you see referenced here, I continue  
2 to tell you represents the tip of the iceberg in terms  
3 of what I made my analytical judgments on. I did not  
4 read 32 documents.

5 Q. No, I understand that. I understand. You've  
6 read literally thousands of documents.

7 Now, Doctor, this document was written on  
8 January 25th, 1954, Carter-5; is that right?

9 A. Yes.

10 Q. It was written by Paul Hahn, chairman; is  
11 that correct?

12 A. Yes, yes.

13 Q. Are you making the accusation now that  
14 Mr. Hahn was lying when he wrote this document? You  
15 can analyze and determine that based on your expertise  
16 as an information operation analyst?

17 A. I can say that the institution, the  
18 enterprise that he represented, he represented chairing  
19 one or being the CEO of one of those enterprises,  
20 showed internal memorandum at the same time they had  
21 the intention of creating this organization principally  
22 as a public relations organization.

23 Q. Okay. Now, you make that statement about  
24 what CTR was. Why don't you tell me all of the public  
25 relations efforts that CTR undertook that you've

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1 reviewed. Why don't you describe each public relations  
2 effort that you've seen come from CTR.

3 A. My intent in looking at this dimension of it  
4 was to look at the intent of what they were creating.

5 Q. So I take it by that answer, you haven't, you  
6 couldn't tell me any particular public relations  
7 activity that CTR undertook; is that right?

8 A. The body of information that I looked at  
9 showed a pattern of trying to control the output of  
10 research.

11 Q. Is there a reason --

12 A. They did that by editing, they did that by  
13 hiding it, they did by trying to steer money towards  
14 research and researchers that would they felt produce  
15 favorable results, they did that by discrediting  
16 researchers and research that were generating  
17 unfavorable documentation or unfavorable research.  
18 That was the pattern of activity.

19 Q. Doctor, you have been saying that they did  
20 that all day and I'm asking you for specifics. Who?  
21 Who were the researchers that they found to generate  
22 favorable research? Who? Name them.

23 A. I can go into my file and I can generate more  
24 specific data in terms of times and names. They acted  
25 as an enterprise, they acted as a group, and they acted

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1 this way over time. I didn't write the internal  
2 memoranda that dictated what their initial goals were.  
3 They wrote it.

4 Q. Doctor, you tell me, describe right now with  
5 specifics the public relations activities that CTR  
6 engaged in that you know about. Tell me what they  
7 are.

8 A. The basis for my testimony is to say that  
9 they put the CTR, their own memoranda say they created  
10 the CTR for damage control or for public relations  
11 purposes.

12 Q. So you --

13 A. That's their documentation.

14 Q. So you cannot answer my question; is that  
15 right?

16 A. I just did answer your question.

17 Q. Describe for me with specifics public  
18 relations activities that CTR undertook. Tell me one.

19 A. Destroying research or hiding research.

20 Q. You know for a fact that CTR destroyed  
21 research; is that your testimony?

22 A. I know for a fact that CTR suppressed  
23 research.

24 Q. What --

25 A. Hid research.

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1 Q. What research did they suppress?

2 A. Research that generally was negative to their  
3 cause. I can go in --

4 Q. Which research did they suppress? Name a  
5 study or a scientist whose research they suppressed.

6 A. If I can get to my notes and I can come up  
7 with various documentations, that many of it is also  
8 confidential or proprietary, to do that. If you're  
9 asking, you're asking this to be a memory contest and  
10 I'm trying not to make it a memory context, but it's  
11 there.

12 Q. Doctor, Doctor, what did you think we were  
13 going to be talking about today at this deposition?

14 A. We're going to talk about -- I was prepared  
15 to talk about trends, tendencies, goals and patterns  
16 that fit or did not fit into what I describe as  
17 information operations and how they used that pattern,  
18 and that's what I've tried to do. I did not prepare to  
19 come in here and talk about --

20 Q. About the facts.

21 A. -- 45 years of dates and titles and  
22 personalities and where they fit into an organization  
23 at what period of time.

24 Q. Doctor, you don't have a clue about the facts  
25 concerning the history of this industry from 1954 to

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1 the present. All you know is what you've been given to  
2 read; isn't that right?

3 A. I disagree.

4 Q. You say in your affidavit, paragraph C, last  
5 sentence on page 11, "Its original and continued  
6 purpose is to challenge the media." Can you give me an  
7 example of when CTR has challenged the media?

8 A. I can give you a number of examples from  
9 documents that I can pull out that talk about  
10 controlling the information that goes to the media.  
11 Challenge here is a relative term. Making sure that  
12 the media puts out information positive than less  
13 supportive.

14 Q. Doctor, looking at page 12, paragraph A, you  
15 reference a letter in that paragraph. Do you see that?

16 A. Yes.

17 Q. Who wrote the letter?

18 A. R.J. Reynolds public information manager.

19 Q. Is that a letter that was written -- let me  
20 ask you this way: You don't know whether that public  
21 information manager was of a high level or mid level or  
22 low level, do you, in the company?

23 A. No, I do not.

24 Q. You don't know whether or not R.J. Reynolds  
25 reviewed that letter before it went out the door, do

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1     you?

2             A.    No.

3             Q.    You don't know if that letter represents a  
4     statement that was adopted by the company or not, do  
5     you?

6             A.    It's a statement from a company official.

7             Q.    Is any statement by any company employee  
8     regardless of their rank a statement that reflects the  
9     company's position?

10            A.    This gentleman was a public information  
11    manager. He was not any employee.

12            Q.    What is a public information manager?

13            A.    Within R.J. Reynolds, I don't know, but it's  
14    something higher than someone who has no management  
15    authority.

16            Q.    You're making it up, Doctor.

17            A.    I'm reading the title for manager.

18            Q.    But you don't even know?

19            A.    I have a master's in business  
20    administration. I know what the title manager means.  
21    It means he's a manager --

22            Q.    That's fine. Sir, you don't know anything  
23    about the public information department at R.J.  
24    Reynolds, do you?

25            A.    What I said to you is I know what a manager

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1 is. He can manage information or people. His title  
2 said that he's a manager.

3 Q. Look at paragraph E on this page. Here as an  
4 expert you make the assertion that advertising which  
5 purports to discourage smoking by labeling it as an  
6 adult custom is really designed to plant the impression  
7 that smoking will show maturity and independence.

8 A. Right.

9 Q. On what expertise do you reach that  
10 conclusion?

11 A. From the internal memorandum that  
12 specifically says that we can create things like double  
13 jargon, we can call it Kools to imply that it has the  
14 meaning of it's cool or it's cool to a young person.  
15 We can have meanings that it's slim, we can have  
16 meanings that it is a way to join the group. The fact  
17 that it's an adult custom and you don't do it says if  
18 you want to be an adult, this is something you might  
19 want to consider to do.

20 Now, in the internal memorandum, this  
21 strategy was discussed, this way of almost negative  
22 talk that says this is an adult custom. If you want to  
23 be adult, do these kinds of things. Slim, attractive,  
24 successful, athletic, et cetera, people do these  
25 things.



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1 Q. Have you undertaken any research to determine  
2 what the actual effect was of this ad campaign on any  
3 audience, to see what the actual effect was? Have you  
4 studied that?

5 A. No.

6 Q. Have you studied the actual effect of any  
7 advertising campaign by the tobacco industry?

8 A. No. When you mean study the effect, did I do  
9 a separate study to look at this is what the analysis  
10 said clearly we were intending to do? The extent to  
11 which they were successful in that strategy can be  
12 borne out several ways. One is there are still many,  
13 many, many smokers in the country today. Their profit  
14 line, their business enterprise successes, those are  
15 evidences that they're being successful in their  
16 marketing or advertising strategy.

17 Q. Is it your testimony that because people  
18 smoke, there must be some wrongful conduct on the part  
19 of the tobacco industry?

20 A. If the tobacco industry is saying in open, in  
21 public documents that there is no health-related threat  
22 or it's inconclusive between tobacco and health and in  
23 their internal memoranda confirming amongst each other  
24 that we've got to make sure that this kind of  
25 information doesn't get out, then I think that meets

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1 the criteria, the standard of being suspect and  
2 being -- needing to be looked into. I'm not a lawyer  
3 so I don't know --

4 Q. My question to you is: Is it your testimony  
5 that no one would smoke but for the wrongful conduct of  
6 the tobacco industry?

7 A. No. You're saying every smoker smokes  
8 because of advertising?

9 Q. I'm not saying anything. I'm asking you.

10 A. I don't know what you are saying.

11 Q. I'm asking you.

12 A. I can't do --

13 Q. Are you saying that but for the conduct of  
14 the tobacco industry as you've alleged it, there would  
15 be no smoking?

16 A. I'm not saying that.

17 Q. In your affidavit, the last sentence on page  
18 12, the sentence says, "This plants the impression that  
19 smoking will show maturity and independence."

20 A. Uh-huh.

21 Q. That's a statement of fact about what the  
22 effect is of that ad, isn't it?

23 A. That's a statement of the internal memoranda  
24 aims and goals of this kind of advertising.

25 Q. Now, your statement doesn't say this was

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1 intended to plant. It doesn't say this is consistent .  
2 with memoranda that talk about planting. It says as a  
3 fact, "This plants the impression" as you have made the  
4 conclusion that this advertising had that effect.

5 A. I didn't need to make the conclusion. The  
6 tobacco industry internal memoranda were the  
7 professionals in advertising, were the -- did that and  
8 where extremely large quantities of money were directed  
9 at this kind of advertising and this theme of smoking  
10 as an adult thing. They say themselves through their  
11 actions and words in these documents that that was a  
12 major strategy for them. They talk about adult -- or  
13 doubling meanings, et cetera, and jargon. These are  
14 their words.

15 Q. Is that your conclusion based on a reasonable  
16 degree of information operation probability?

17 A. Yes.

18 Q. Do you know who Patricia Stout is?

19 A. Not off the top of my head.

20 Q. Did you have any role in writing an affidavit  
21 for her?

22 A. Patricia Stout, did I write an affidavit for  
23 Patricia Stout?

24 Q. Yes.

25 A. I don't recall that.

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1 Q. Do you know why it is that Patricia Stout,  
2 who is an expert for the state, has an affidavit that  
3 contains language in it that is virtually identical to  
4 the language you use in paragraphs that begin with "my  
5 conclusion is based upon a reasonable degree"? Do you  
6 know that she copies that language virtually verbatim?

7 A. I do not. I have not seen her testimony.

8 Q. Do you have any idea how she could have  
9 gotten that language? Do you think that was  
10 coincidental?

11 A. I have no idea how she got that information.

12 Q. Is that because the state has been working  
13 with you in terms of the language that needs to appear  
14 in these affidavits?

15 A. These are my words. Maybe she looked at my  
16 document. I don't know.

17 Q. Look at paragraph A on page 13. What is the  
18 Tobacco Institute?

19 A. It's one of the, I believe it's one of the  
20 trade organizations that operate in the enterprise.

21 Q. Who does it do?

22 A. I'm not sure what it's chartered to do.

23 Q. You don't know what the Tobacco Institute is  
24 chartered to do?

25 A. I see its actions and its documentation as a

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1 part of the group.

2 Q. But you don't know what its charter is?

3 A. I believe it's a trade organization by title.

4 Q. How many employees does it have?

5 A. I have no idea.

6 Q. What's its budget?

7 A. I have no idea.

8 Q. What is the work product that it produces?

9 A. Ultimately, I don't know.

10 Q. What public statements -- well, let me  
11 start: Who is Horace Kornegay?

12 A. Again, I'd have to refer to my  
13 cross-references on names, but obviously he's the  
14 president, as stated here, president of the institute.

15 Q. If Horace Kornegay is affiliated with the  
16 Tobacco Institute, is that likely that as part of his  
17 job he has to put a positive viewpoint on tobacco? Let  
18 me rephrase it.

19 A. Yes.

20 Q. Bad question.

21 What's Horace Kornegay's job? What's he  
22 supposed to do as president of the Tobacco Institute?

23 A. I don't know the full -- I haven't seen his  
24 job description. He's the president of an organization  
25 that's in support of tobacco and its manufacture and

1 sale.

2 Q. How many trade organizations are there in the  
3 United States?

4 A. I have no idea.

5 Q. Thousands?

6 A. I have no idea.

7 Q. Tens of thousands?

8 A. I have no idea.

9 Q. Does Horace Kornegay have the right to make a  
10 speech in which he's supportive of tobacco? Does he  
11 have that right?

12 A. That's not for me to decide.

13 Q. And is there anything in this statement of  
14 his that you have knowledge of that he believed was  
15 false?

16 A. No.

17 Q. As far as you know, these are his truly held  
18 beliefs; is that right?

19 A. Yes.

20 Q. And he's stated them?

21 A. Right.

22 Q. And that's part of an information operations;  
23 is that correct?

24 A. Absolutely, selective application of the  
25 truth, weaving in with all these other admissions is a

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1 powerful instrument.

2 Q. Take a look at page 14, paragraph A. You  
3 reference a frank statement to the public by the makers  
4 of cigarettes?

5 A. Uh-huh.

6 Q. Is that an incorrect statement as of the date  
7 that it was made with respect to reports that linked  
8 smoking with cancer are inconclusive, is that an  
9 incorrect statement at that time?

10 A. I believe that was the consistent statements  
11 made by the tobacco industry, that they were  
12 inconclusive.

13 Q. But my question to you is: Was it incorrect  
14 in 1954?

15 A. According to internal memoranda, the  
16 beginning of evidence that this was an area that needed  
17 to be looked at and extensive research began, and in  
18 the absence of that extensive research, of course it  
19 would be inconclusive. As research continued, the  
20 tobacco industry has continued to contend, even after  
21 45 years, it's inconclusive and needs more research.  
22 That's what they say in public forum.

23 Q. So, Dr. Carter, answering my question, as of  
24 1954 when this statement was made, your answer is that  
25 it is accurate?

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1           A.    If you look at the study that was done in  
2    '54, this statement was made soon after the Wynder  
3    study came out that said there's a linkage between tar  
4    being applied to the skin of rats and cancer. I find  
5    it interesting that this statement came out soon  
6    thereafter.

7           Q.    The statement says it's coming out for that  
8    reason, doesn't it?

9           A.    Right.

10          Q.    That's the whole point. There are scientific  
11    studies that are published and well-known in the United  
12    States?

13          A.    Right.

14          Q.    Isn't that right?

15          A.    Right.

16          Q.    That's the whole point of this, and these  
17    studies are out there and they're known to everybody,  
18    aren't they, Doctor? They're in the Readers -- they're  
19    reported on in Readers Digest, aren't they?

20          A.    I think you need to look at the timing of  
21    this. We have the Wynder study --

22          Q.    I need an answer to my question.

23          A.    All right.

24          Q.    They're reported in Readers Digest, aren't  
25    they?



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1 A. Yes.

2 Q. They're reported in the New York Times,  
3 aren't they?

4 A. Remind me what "they" are.

5 Q. These Wynder studies and Graham and mouse  
6 skin painting and some of the early epidemiological  
7 studies, they've all been reported in the magazines?

8 A. Right.

9 Q. Time magazine, U.S. News and World Report,  
10 it's well-known in the public, isn't it, and is in  
11 January of 1954, this statement is issued by the  
12 industry and it makes specific reference to those  
13 studies, doesn't it?

14 A. Right.

15 Q. And it says, "The recent reports trying to  
16 link smoking with cancer are inconclusive."

17 A. Right.

18 Q. And that's an accurate statement, isn't it?

19 A. At that time, it probably was.

20 Q. Look at page 15. One of the pillars of  
21 information operations is that the industry undertook  
22 activities that had the effect of supporting the  
23 performing arts or education or social causes; is that  
24 right?

25 A. Yes.

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1 Q. That's one of the telltale signs of an  
2 information operation is when companies engage in  
3 charitable events and participate in community  
4 activities; is that right?

5 A. One of the dimensions of information warfare  
6 is to keep the good, positive public image through that  
7 public image and the credibility of your institution  
8 that brings to try to stay in business, to try to have  
9 credibility, to try to seem to be community spirited.  
10 That is one of the personas of the industry to do that,  
11 yes.

12 Q. But they only want to seem to be community  
13 spirited. Your expertise has revealed that in fact  
14 that was just a front, they had no real desire to be  
15 interested in the community?

16 A. I said in my testimony and I say now that  
17 when you looked at their actions across all of the legs  
18 of the information operations, of which public affairs,  
19 civil affairs, civil involvement is critical to build  
20 good images of that institution while you're conducting  
21 other activities to hide, deceive, suppress, destroy,  
22 is an ingredient of IO, yes.

23 Q. And some of the scandalous activities that  
24 you cite in your affidavit at this point include a  
25 \$3.5 million collection of volumes that the New York

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1 public library was able to get, or to clean, rather, as  
2 a result of a grant from the tobacco companies; is that  
3 right?

4 A. I'm looking for the word scandalous. I don't  
5 know that I used the word scandalous, did I?

6 Q. Dr. Carter, today who do you think the  
7 American public has greater beliefs, has greater  
8 credibility, the tobacco industry or the surgeon  
9 general?

10 A. I think the surgeon general.

11 Q. Who do you think they have that has greater  
12 credibility, their parents and their family or the  
13 tobacco industry?

14 A. I don't know.

15 Q. Who do you think has greater credibility in  
16 society today, high school and junior high school  
17 teachers or the tobacco industry?

18 A. I don't know.

19 Q. You generally don't know?

20 A. I don't know the specific questions you're  
21 asking.

22 Q. That's because you haven't studied that; is  
23 that right?

24 A. That's because those specific points that you  
25 mentioned I haven't looked at. I'd be more than

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1 willing to look at any documentation that you might  
2 want to show me that might point me to some conclusions  
3 in those areas, but I didn't look at those particular  
4 data points.

5 Q. Do you know any person who today does not  
6 understand that smoking can be hazardous to your  
7 health?

8 A. Repeat the question, because you had a double  
9 negative in there.

10 Q. Do you know any person who is unfamiliar with  
11 the notion that smoking can be hazardous to your  
12 health?

13 A. There's a participating population, and  
14 tobacco knows this, that doesn't believe what it  
15 reads. So even when it reads that smoking, as stated  
16 on the tobacco, the product itself, that it can be  
17 hazardous to your health, they still believe that  
18 that's an inconclusive statement dictated by the  
19 surgeon general and mandated on the tobacco industry to  
20 be placed there.

21 Q. What research have you done to make that  
22 statement?

23 A. I think there's an internal memoranda that  
24 says that what motivated young people to do rebellious  
25 things, to act like an adult, to do something

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1. specifically that an adult tells you not to do, I think  
2 that's plain in adolescent behavior, it's been  
3 discussed in internal memoranda that I looked at and  
4 was known to the industry to be effective.

5 Q. Can you think of any product that has been  
6 more studied than the cigarette?

7 A. I don't know the relative degree of study on  
8 one industry on the other side. I wouldn't want to  
9 speculate on that.

10 THE VIDEOGRAPHER: Counsel, it's getting to  
11 be time to change the tape. There are a couple of  
12 minutes left on it.

13 MR. LERMAN: Okay.

14 THE WITNESS: I'd like to take a break if  
15 that's convenient also.

16 MR. LERMAN: Let's take a break.

17 THE VIDEOGRAPHER: This is the end of tape  
18 number 4 in the deposition of Ronald W. Carter. The  
19 deposition will be continued on tape number 5. The  
20 time is 6:54 p.m., going off the record.

21 (Brief recess.)

22 THE VIDEOGRAPHER: Back on the record. This  
23 is the beginning of tape number 5 in the deposition of  
24 Dr. Ronald W. Carter. The time is 7:05 p.m.

25 Q. Doctor, do you have an opinion that any

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1 specific number of Medicaid recipients in Texas began  
2 smoking because of the conduct that you've described in  
3 your affidavit?

4 A. I think as part of the general population in  
5 Texas that they were influenced by this strategy, and  
6 the ultimate aim of the strategy was business and that  
7 business was selling this product.

8 Q. Listen to my question. Do you have an  
9 opinion regarding a specific number of Medicaid  
10 recipients in Texas who began smoking because of the  
11 conduct that you've described?

12 A. I cannot cite a number.

13 Q. Do you have an opinion with respect to -- let  
14 me start again. Do you have an opinion that any  
15 specific number of Medicaid recipients continued  
16 smoking because of the conduct that you've described in  
17 your affidavit?

18 A. I have an opinion that the program, the  
19 information strategy employed on Medicaid or other  
20 target audiences in Texas was successful and was well  
21 resourced, was deliberate, and was focused on  
22 continuing the market, and the market required the  
23 perpetuation of smoking. So if you've asked for an  
24 opinion, that's my opinion.

25 Q. I need you to answer the specific question

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1 that I'm asking you.

2 Do you have an opinion that any specific  
3 number of Medicaid recipients in Texas continued to  
4 smoke because of the conduct that's described in your  
5 affidavit?

6 A. You're asking me for an opinion of a number?

7 Q. A specific number.

8 A. I don't have an opinion of a specific number.

9 Q. All right. As part of your expert testimony,  
10 are you going to provide an opinion regarding how many  
11 Medicaid recipients started smoking because of the  
12 conduct that you've described?

13 A. It's not relevant to my analysis to come up  
14 with a number as long as that number is representative  
15 of the general population. Now, if there's one or ten  
16 or a hundred or a thousand or a million, of course the  
17 more that are affected by it, the more burden on  
18 Texas. The pattern of activity of tobacco has been to  
19 keep that population set and all others that they can  
20 reach in the smoking domain and spending money on  
21 cigarettes. That's how they made a profit and that was  
22 their business line.

23 Q. Are you going to express an expert opinion or  
24 do you have -- let me start again.

25 Do you have an opinion that any specific

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1 number of medication recipients in Texas decided not to  
2 quit smoking because of the conduct of the tobacco  
3 companies?

4 A. Decided not?

5 Q. Let me help you out. It's basically the same  
6 question. Are you going to provide an opinion  
7 regarding specific numbers of people who were affected  
8 by the conduct that you've described?

9 A. I've going to provide testimony to the fact  
10 that this grouping of the smoking population, the  
11 existing in this case ill population was part of the  
12 target audience that tobacco sought to continue  
13 smoking, part of the target audience, by age group, by  
14 location, et cetera and that's confirmed in the  
15 universe of information I've read.

16 Q. I'm focusing now on specific numbers. Are  
17 you going to be testifying about specific numbers of  
18 people?

19 A. I'm not going to in my testimony try to come  
20 up with a finite discrete number.

21 Q. And that's because you have done no study to  
22 determine that number; is that correct?

23 A. I -- the number of Medicaid recipients in  
24 Texas that do smoke is available, could be made  
25 available to me. I didn't need to seek that out as



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1 long as I knew that that population existed. You're  
2 asking for a discrete number and I don't have that  
3 number to give you right now.

4 Q. I want to make sure we're clear. Stay with  
5 me now because it's getting late and we've got to  
6 concentrate. Have you performed -- let me back up.

7 Do you have an opinion, an expert opinion on  
8 how many Medicaid recipients in Texas took up smoking  
9 because of the conduct that you allege took place?

10 A. I think I've answered that question, but I'll  
11 try --

12 Q. And the answer is with respect to a specific  
13 number, the answer is no; is that right?

14 A. You keep asking for a specific number and I  
15 keep telling you that I'm not prepared to give you a  
16 specific number. That was a target audience of  
17 tobacco. Existing smokers in all states, to include  
18 Texas, were the target, were part of the target  
19 audience that they want to reach and they did reach.

20 Q. Have you done any research among the Medicaid  
21 population in Texas, period?

22 A. I've included in the data that I looked at  
23 the fact that there is a population, there is a  
24 population that is sick from tobacco-related activities  
25 in Texas. If you're asking me to recite that number, I

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1 can't do it from memory.

2 Q. Have you done any studies of the Medicaid  
3 population in Texas with respect to their demographics?

4 A. Beyond being in Texas?

5 Q. Yes.

6 A. You mean where in Texas?

7 Q. Age, race, ethnicity, education, have you  
8 studied any of that?

9 A. No, not as a separate detailed thing to  
10 study. I know them as a population group in Texas, but  
11 not by age, by ethnicity specifically in Texas.

12 Q. Okay. If I wanted to conduct a study to see  
13 whether or not a particular act on the part of the  
14 tobacco companies, for instance, had an impact on that  
15 population, what would I have to do to conduct that  
16 study?

17 A. Well, you'd have to obviously look at whether  
18 you have sick people in Texas, and I believe you do.  
19 You would have to look at what was the cause of that  
20 illness, and to what reasonable certainty do you think  
21 that cause in this case is related to smoking.

22 Q. Okay.

23 A. You would have to look at could there be any  
24 other cause of, medical cause of that illness, discount  
25 those, and when you've done that and you've narrowed it

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1 down to being reasonably linked to their actions of  
2 smoking, then you can look at that group and you can  
3 count them. Now, the fact that a group exists, the  
4 fact that they're sick, the fact that they smoke is a  
5 matter of, is a matter that can be looked at or a  
6 matter that's available.

7 Q. Going back to your affidavit, look at page 8,  
8 if you would. I'm sorry, I'm on the wrong page.

9 A. Whoops.

10 Q. My fault. Take a look at page 6. That first  
11 full paragraph at the top of page 6, "Based upon a  
12 reasonable degree of information operation  
13 probabilities, these activities have caused nonsmokers,  
14 both adolescents and adults, to initiate smoking and  
15 continue the smoking habit."

16 A. Uh-huh.

17 Q. Okay. Do you have an expert opinion as to  
18 how many nonsmokers it has caused to initiate smoking  
19 and continue to continue the smoking habit? Number? I  
20 want a number. Do you have a number?

21 A. I'm not prepared to cite a discrete number  
22 from memory.

23 Q. But have you such a number?

24 A. I don't know that that number exists. It is  
25 a population group that's known to exist in --

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1 Q. Okay. Your testimony --

2 A. Right.

3 Q. -- your analysis that -- let me start over.

4 The analysis that you have done has not been  
5 focused on determining a number with respect to how  
6 many people precisely have been affected or it caused  
7 to do something; is that right?

8 A. My focus has been on is there a population  
9 group in Texas that have been affected by the actions  
10 of the tobacco industry and is that a number that is  
11 available to Texas through their Medicaid payments.  
12 The fact that the number, that I don't have the number  
13 in my head is in my judgment not relevant to my  
14 analysis.

15 Q. Well, are you saying that everybody who  
16 smokes -- when -- let me back up. Let's parse this out  
17 because I'm not understanding what you're saying.

18 A. Uh-huh.

19 Q. You say at the top of page 6, "These  
20 activities have caused nonsmokers, both adolescents and  
21 adults, to initiate smoking."

22 A. Okay.

23 Q. How many such people?

24 A. If you look at the internal memorandum of the  
25 tobacco industry, they recognize that this group exists

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1 and they targeted information campaigns, ads, the whole  
2 information or much of their information program --

3 Q. Okay, I'm focused --

4 A. -- to make sure that this group either began  
5 to smoke, I didn't say that someone who was an adult or  
6 even Medicaid eligible --

7 Q. Okay, Doctor, it's 7:30 at night and I asked  
8 you a question.

9 A. Right.

10 Q. The question was how many. Can you answer  
11 that question?

12 A. I told you, I cannot come up with a discrete  
13 number.

14 Q. And you have not done any analysis that would  
15 produce a discrete number; is that correct?

16 A. It was not relevant to my analysis to try to  
17 come up with a discrete number of a population group  
18 that I knew existed.

19 Q. Okay, and that's true, that is true with  
20 respect to the number of nonsmokers who started  
21 smoking, that's true with respect to the number of  
22 smokers who continued smoking and that's true with the  
23 number of smokers who refrained from quitting, you did  
24 not come up with numbers for those groups; is that  
25 correct?

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1 A. That's true.

2 Q. And you are not saying, by the way, that  
3 every person who chose to smoke did so because of the  
4 conduct of the tobacco industry?

5 A. I don't think anything in this area is  
6 absolute, so I will not make an absolute statement.

7 Q. There are some people who would choose to  
8 smoke regardless; is that right?

9 A. The problem with talking about people, it's  
10 hard to -- there's a whole range of reasons why people  
11 smoke.

12 Q. Yes, there are. What are some of them?

13 A. The actions of the tobacco industry to try to  
14 persuade and influence them to do so.

15 Q. What are some of the others?

16 A. Peer pressure.

17 Q. What else?

18 A. I don't know. I mean, the list could go on,  
19 but I don't know. You're asking me to get in the head  
20 of every individual and every -- I'm telling you that  
21 this was a deliberate campaign that worked for tobacco  
22 and they stayed with it.

23 Q. And getting in the head of every individual  
24 and figuring out why they did something is beyond what  
25 you're able to do; is that right?

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1 A. It's beyond what anybody is able to do.

2 Q. People do things for their own reasons.

3 A. I'm sorry, is that a question?

4 Q. That's a question. People do things for  
5 their own reasons, right?

6 A. People are subject to be persuaded to action  
7 and I think tobacco clearly understood that.

8 Q. Now, let me ask you a question that I asked  
9 you before but I want to make sure we understand each  
10 other. Can you identify any individual Medicaid  
11 recipient who decided to smoke, not smoke, quit or not  
12 quit because of what the companies said or did?

13 A. I have no individual name to give you.

14 Q. Okay. You testified earlier that your  
15 analysis, you used an analogy, you did an analysis to  
16 determine whether the cannon was fired, not whether the  
17 cannon ball struck a particular target. Is that fair?  
18 Is this a fair characterization of what you said?

19 A. I have to remember the context I said it was  
20 in, but one of the ways to decide whether a campaign  
21 strategy existed was to see if the intended effects was  
22 to persuade or hide or influence. So I used that as  
23 the effect, the intent was to fire at the target. It's  
24 the second decision as to whether it hit the target  
25 effectively. In that context, I said it was clear

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1 evidence that they had intended, it was to do it. They  
2 were deliberately engaged in this campaign, this  
3 campaign strategy. I think that was the context I  
4 tried to put it in.

5 Q. Now, in a wartime situation when an  
6 information operation is undertaken, the -- and I'll  
7 talk about it from the United States side, from our  
8 country's side, we are in control of the information  
9 regarding our military operations that is available to  
10 the other side. Am I making myself clear?

11 A. In a military setting, we would hope to  
12 control or limit or secure, protect, the information  
13 that the enemy in your scenario would be --

14 Q. But in a military setting, and I'll use a  
15 simple example, the location of troops, there's only  
16 one entity that knows the answer to the location of  
17 troops in a military setting, and that would be the  
18 defense entity in charge of those troops; isn't that  
19 right?

20 A. There would be one entity that knows where we  
21 positioned those troops. The other entity would be  
22 attempting to discover that, yes.

23 Q. That would be our opponent, our adversaries?

24 A. Our opponent or adversary or wherever we get  
25 put in the world to do whatever missions these days,



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1 right.

2 Q. And the number of sources of information  
3 regarding the location of troops is therefore limited  
4 because it's only the defense structure that has that  
5 information; is that right?

6 A. That would be the hope in your scenario, that  
7 would be the hope of the U.S. forces. That would be  
8 the challenge to thwart that hope of the opposing  
9 forces.

10 Q. In private industry in the marketplace in the  
11 United States in the civilian economy, there is no  
12 entity that has a monopoly on scientific information;  
13 isn't that right?

14 A. I suspect not.

15 Q. No one controls the flow of scientific  
16 information; isn't that right?

17 A. There are entities that would try to do that,  
18 either limit it or steer it or control it. I don't  
19 know what you mean by nobody can.

20 Q. By 1994, I quoted you a statistic, there were  
21 93,000 published studies in the smoking and health  
22 field.

23 A. Uh-huh.

24 Q. In what sense did the tobacco industry  
25 control those 93,000 studies?

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1           A.    What I alluded to in the internal document  
2           was what their strategy was intending to try to do.  If  
3           they could not, if they could not preclude all research  
4           from being exposed, they certainly set up an  
5           institution with an intention to try to limit it, to do  
6           damage control.

7           Q.    Now, have you done any comparison between  
8           what the tobacco companies' internal research showed  
9           versus what external research was showing at the same  
10          time in the scientific community?  Do you understand  
11          what I'm asking?

12          A.    If I believe -- I believe I do.  The curious  
13          thing about this whole area of research in tobacco is  
14          that research, there's a lot of additives, chemicals in  
15          cigarettes smoke that cause a lot of ailments or that  
16          contribute to what makes a cigarette attractive to the  
17          consuming audience.  There appears to be in the  
18          research inconclusive evidence by some parties'  
19          contention as to whether there's scientific proof that  
20          that existed.

21                Now, it's interesting that at the same time  
22          that one industry is contending that it is  
23          inconclusive, that this body of research is still  
24          inconclusive, internally they're talking about the  
25          addictive and the health-related factors of smoking,

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1 which they appear to have already concluded. I don't.  
2 know if I answered your question or not.

3 Q. I'm not going to -- I'm going to suggest that  
4 you did not, but you did not do a review of the  
5 external research on smoking and health, correct?

6 A. I looked at the documentation that I could  
7 get access to. I'm not sure of your definition of  
8 external.

9 Q. External research meaning outside of the  
10 tobacco companies, at universities, at health  
11 facilities, at the Disease for Center Control -- the  
12 Center for Disease Control, rather, any institution.  
13 You did not study the body of outside research on  
14 smoking and health.

15 A. To the extent that I could come across  
16 research in my Internet search, I looked at it. I  
17 don't know what you would consider a deliberate or an  
18 exhaustive research of external research. I don't know  
19 what your standard is.

20 Q. Do you consider it to be a deliberate and  
21 exhaustive search?

22 A. It's what I used in the formulation of my  
23 opinions and analysis.

24 Q. Okay. Who was Ernest Peeples?

25 A. Again, on all personalities, I'm going to

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1 have to ask to be allowed to refer to my  
2 cross-references on personnel.

3 Q. What is this document that is the  
4 cross-references on personnel? What is it?

5 A. There are other notes where I tried to, as  
6 long as I could relate personnel in the industry as  
7 being associated with the industry, I grouped them in  
8 that category. Now, if they were, if I could discern  
9 that they were low level people, I grouped them as low  
10 level people. People that were officials of some  
11 stature in the industry, I tried to use that memoranda  
12 or document with more weight.

13 Q. So you had organization --

14 A. He seemingly, he seemingly met that, he or  
15 she seemingly met that criteria.

16 Q. Who is he or she?

17 A. You referred to E. Peeples.

18 Q. E. Peeples, he or she seemingly meets the  
19 criteria for what?

20 A. For me having used this memoranda as a part  
21 of my citing this memorandum, he met the standards of  
22 being sufficiently authoritative in the industry that I  
23 ought to read and listen and draw conclusions from what  
24 was said.

25 Q. And what was he?

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1           A.    Let me read the -- again, we're back to, as  
2   you say, it's late at night. I'm sorry, what was your  
3   question again?

4           Q.    What was he?

5           A.    What was he?

6           Q.    Yeah. What was his position?

7           A.    I'm asking you once again to let me -- he was  
8   an official within the industry of some standing or I  
9   wouldn't have cited it.

10          Q.    What document is going to tell you who he is  
11   that you keep asking for? What is that?

12          A.    The -- some of my notes, I cross-referenced  
13   personnel and their stature. The memoranda was given  
14   to me through disclosure as an individual associated  
15   with the tobacco industry except --

16          Q.    Who gave it to you?

17          A.    It came from disclosure in this particular  
18   case, this document.

19          Q.    When you say disclosure, what does that mean?

20          A.    It came to me from Texas. I believe that's  
21   the source of this particular one.

22          Q.    Who R.R. Black?

23          A.    You're down to F now?

24          Q.    Yes, I'm looking at F.

25          A.    I'm sorry.

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1 Q. On page 6.

2 A. Again, I go back to my same answer. I'd have  
3 to...

4 Q. Who is M. Harrington?

5 A. Can you tell me where you're reading from?

6 Q. Page 7, paragraph A.

7 A. Tell me again where you're looking on the  
8 document.

9 Q. Paragraph A, page 7.

10 A. Page 7, paragraph A. Down at the bottom,  
11 there's two paragraph A's.

12 Q. I'm sorry, my mistake.

13 A. Again, he was an official in the industry. I  
14 don't know which particular position he served in to  
15 cite for you right now.

16 Q. Which company?

17 A. Which company within the seven companies?

18 Q. (Nods head.)

19 A. I can't recall off the top of my head.

20 Q. Who is W.W. Estes?

21 A. I give you the same answer.

22 Q. Take a look at page 9. Who is Claude Teague?

23 A. I'd have to refer to the document itself.

24 Again, when I made these summaries, I at least had the  
25 documents in front of me to which I referenced. These

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1 are just gisted summaries of the names without any  
2 context of -- many of these had letterheads, had  
3 titles, so in that particular case, I'd have to go back  
4 and refer to the document.

5 Q. Which company did Claude Teague work for?

6 A. I thought that I just answered that  
7 question. I'd have to look to see if he prepared that  
8 memoranda on stationery that identified the particular  
9 company he worked for within the industry.

10 Q. Who is J.L. Charles?

11 A. I'll give you the same answer.

12 Q. Do you know what his position is?

13 A. I'd have to look at the document. I may be  
14 able to pull it off the document. A lot of this  
15 documentation had titles and letterheads on it.

16 Q. Who is Fred Panzer?

17 A. Can you tell me where you're reading from so  
18 I can follow you?

19 Q. Page 15, paragraph E.

20 A. I would have to refer to the document. I  
21 might be able to discern it from the document, but  
22 without looking at the document, I don't know.

23 Q. Prior to your work today on the tobacco  
24 industry, prior to your working on the tobacco -- it's  
25 a quarter to 8:00 and I apologize. Let me regroup and

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1 start over.

2 Prior to working on this case, --

3 A. Yes.

4 Q. -- had you ever analyzed historical documents  
5 from a private industry before?

6 A. No.

7 Q. Have you read any depositions that have been  
8 taken in this case?

9 A. I think the only deposition I looked at was  
10 the one I -- or excerpts of the deposition that was at  
11 least a question and answer session, it seemed to be  
12 under oath, of Wigand, the BMW researcher.

13 Q. Of who?

14 A. Dr. Wigand. I think as I pulled that off the  
15 Internet, there was a document that looked very much  
16 like a testimony.

17 Q. How many resources has the State of Texas  
18 devoted to enforcing the Synar amendment?

19 A. I have no idea.

20 Q. Do you know what the Synar amendment is?

21 A. No, I do not.

22 THE WITNESS: Has it been an hour yet since  
23 we -- it's been an hour --

24 MR. LERMAN: If you want to take a break,  
25 that's fine.



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1 THE WITNESS: If it's possible.

2 THE VIDEOGRAPHER: The time is 7:39 p.m.,  
3 going off the record.

4 (Discussion off the record.)

5 (Brief recess.)

6 THE VIDEOGRAPHER: Back on the record, the  
7 time is 7:51 p.m.

8 Q. Dr. Carter, isn't it true that the State of  
9 Texas has the ability to communicate with its citizens?

10 A. I think that's a reasonable assumption.

11 Q. And isn't it true that the State of Texas has  
12 the ability to regulate the -- let me start the  
13 question over.

14 A. Uh-huh.

15 Q. Isn't it true that the State of Texas has the  
16 ability to communicate directly with its Medicaid  
17 population?

18 A. Directly meaning face to face or --

19 Q. Either face to face or through the mail or  
20 other means. Isn't that true?

21 A. I think that would be reasonable to conclude.

22 Q. Can you think of any entity that has a more  
23 direct line of communication to the Medicaid population  
24 in particular than the state itself?

25 A. I think they have a strong link. I don't

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1 want to put it in relative terms, but I think they have  
2 a strong link to that group.

3 Q. And isn't the state uniquely situated to  
4 foster health awareness programs among its Medicaid  
5 population?

6 A. Uniquely?

7 Q. Well, isn't it --

8 A. I think in some senses, they're in  
9 competition with the tobacco industry in putting out  
10 information, the type and style of that information and  
11 the effects of it, so I wouldn't say uniquely.

12 Q. Isn't the state in a position to foster  
13 health awareness programs in the State of Texas?

14 A. They're in a position to do that.

15 Q. Have you studied whether they have availed  
16 themselves of that opportunity to the fullest?

17 A. I have not studied that.

18 Q. Do you know whether they have committed  
19 sufficient resources to doing that?

20 A. I don't know what resources they have  
21 committed to doing that.

22 Q. If the state raises the taxes on cigarettes,  
23 would that increase or decrease consumption?

24 A. I think -- the real answer is I don't know.  
25 One initial conclusion might be that it should, but if

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1 the motivation to smoke is high enough or if the  
2 addiction is strong enough, people will still smoke.

3 Q. To a reasonable degree of information  
4 operations probabilities, if the taxes are raised on  
5 cigarettes, will that have the effect of causing some  
6 people to smoke less?

7 A. It could.

8 Q. Do you know whether the state has  
9 regulated -- let me ask it again.

10 Has the state set its taxation policies in  
11 order to have the maximum effect on decreasing  
12 cigarette consumption?

13 A. I have no idea.

14 Q. Do you know whether or not in setting the  
15 level of taxation the state has made its objective  
16 decreasing consumption?

17 A. I don't know what the strategy of the state  
18 is on fixing taxation, taxation of anything, to include  
19 tobacco.

20 Q. Do you know what selective filtration is?

21 A. No.

22 Q. Do you know what general reduction is in  
23 connection with cigarette design?

24 A. No.

25 Q. Have you studied the product modifications of

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1 the cigarette since 1954?

2 A. I have studied -- I have looked at  
3 documentation that talked about the research that was  
4 going -- and desirability of looking at special  
5 featured cigarettes like slim, low tar, filtered,  
6 attractively packaged. Discussions in the internal  
7 memoranda talk about controlling levels of nicotine or  
8 tar in it. I've looked at those kinds of documents or  
9 discussions.

10 Q. Have you independently studied the change in  
11 cigarette design since 1954 other than reading the  
12 documents that you've reviewed?

13 A. The basis of my testimony is based on the  
14 documents I have reviewed.

15 Q. Have you read studies that talk about the  
16 development of different kinds of filters on cigarettes  
17 over time?

18 A. I've read -- filters have been discussed in  
19 the internal documents that I looked at and  
20 documentation I've seen on the Internet, the  
21 desirability of filters, the popularity of filters,  
22 various discussions of that nature.

23 Q. Do you know what -- I'm sorry, excuse me.

24 Isn't it a fact that the delivery, the tar  
25 and nicotine delivery from the average cigarette has

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1 decreased steadily over time since 1954?

2 A. I don't know. That's probably a medical or a  
3 technical research question that I would refer to --

4 Q. Isn't it a fact that the tobacco companies  
5 have spent millions of dollars trying to design  
6 cigarettes that have lower deliveries of tar and  
7 nicotine? Do you know that?

8 A. The internal memoranda talked about  
9 controlling or regulating or influencing the amount of  
10 nicotine that are available in various brands and the  
11 effects that that's going to have. In one context they  
12 spoke about an individual's need for a daily supply of  
13 nicotine and whether by lowering the nicotine level  
14 therefore the individual may in fact buy more  
15 cigarettes to get the same satisfaction. So those  
16 kinds of discussions have come out in the internal  
17 memoranda, so therefore, it's an area of research,  
18 obviously.

19 Q. All right. Let's talk about tar, just the  
20 tar content. It is true, is it not, that the cigarette  
21 companies have over time since 1954 reduced the amount  
22 of tar delivery in cigarettes?

23 A. I don't know what the result of their efforts  
24 have been. I know that they've been concerned about  
25 the combination of tar and nicotine in the content of

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1 the cigarette with the same -- with some aim of  
2 reducing the tar.

3 Q. Based on the FTC's method of measuring tar  
4 and nicotine, has that -- let's just talk tar. Based  
5 upon the FTC's method of measuring tar, has that  
6 delivery over time been going down?

7 A. I don't know.

8 Q. Are you familiar with the cigarette named  
9 Premere?

10 A. Only casually, I've heard the name before.

11 Q. What kind of cigarette was it?

12 A. As I said, I know that it was one that was  
13 mentioned in some of the documentation, but I --

14 Q. What are the major brands of Brown &  
15 Williamson?

16 A. Major brands? I can't recite them from  
17 memory. I know that Brown & Williamson is an industry  
18 that produces various brands.

19 Q. Do you know that Brown & Williamson produces  
20 various brands, is that the extent of your knowledge?

21 A. Well, the extent of my interest in becoming  
22 familiar with this industry is to look at its pattern  
23 behaviors, not to become an expert in exactly which  
24 brand is affiliated with which company. A lot of that  
25 data is obvious from reading the documentation. I just

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1 can't recite it from memory.

2 Q. What are Lorillard's brands?

3 A. I'll give you the same answer.

4 Q. What's the best selling menthol brand on the  
5 market?

6 A. I have no idea.

7 Q. What's the most heavily advertised menthol  
8 brand on the market?

9 A. I don't know.

10 Q. What's the advertising budget for RJR?

11 A. I don't know.

12 Q. What's the advertising budget for U.S.  
13 Tobacco?

14 A. I don't know.

15 Q. What does U.S. Tobacco make?

16 A. U.S. Tobacco? They're a part of the  
17 organizations that affiliated with the tobacco  
18 industry, and that industry line, that enterprise is in  
19 the production and sale of tobacco.

20 Q. What do they make?

21 A. What do they make?

22 Q. (Nods head.)

23 A. I can't recite -- you're talking about a  
24 particular product line?

25 Q. Uh-huh.

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1 A. I'd have to refer to my notes.

2 Q. Then you don't know without looking at your  
3 notes?

4 A. Well, I relied in my analysis on extensive  
5 hands-on with my notes, so the conclusions are based on  
6 having access to my notes.

7 Q. What individual companies -- let me  
8 reformulate the question.

9 What is the projected budget for CTR -- not  
10 projected budget. What was the budget for CTR in 1994?

11 A. I don't know.

12 Q. Do you have any idea what the budget for CTR  
13 has been in any year?

14 A. I do not.

15 Q. Do you know whether it's been going up, going  
16 down, staying the same?

17 A. I know it has a budget. I know it's -- I  
18 don't know what the number is.

19 Q. You're willing to state it has a budget?

20 A. It seems to have a budget to operate.

21 Q. What is Imperial Tobacco?

22 A. I don't know. It probably has something to  
23 do with a particular blend or leaf style.

24 Q. Okay. Do you know anything else about  
25 Imperial Tobacco?



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1 A. No.

2 Q. What is the business of BAT?

3 A. They're a -- to the extent it came out in the  
4 documents I looked at, they're a British-based firm  
5 that has, I believe they own Brown & Williamson,  
6 considered their overseas affiliate, and they're in the  
7 tobacco production business basically in Britain.

8 Q. Okay. Who is Cecilie Leuchtenberger?

9 A. I don't know. Without referring to notes, I  
10 wouldn't know.

11 MR. LERMAN: This might be a good time to go  
12 off the record.

13 THE VIDEOGRAPHER: Okay. The time is 8:06  
14 p.m., going off the record.

15 (Brief recess.)

16 THE VIDEOGRAPHER: Back on the record. The  
17 time is 8:12 p.m.

18 Q. Doctor, I want to go through your affidavit  
19 one more time with you.

20 A. Uh-huh.

21 Q. I apologize for coughing, but I'm doing too  
22 much talking, I think, today.

23 Looking at page 6, the document referenced in  
24 paragraph A, what was the source for that document? In  
25 other words, where did you get it?

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1           A.    I'd have to look at the document itself to  
2   say.

3           Q.    Okay. Do you know, looking at paragraph B,  
4   do you know where you got the deadwood document?

5           A.    I'd have to look at the source. I believe  
6   that one came from -- it was provided to me from  
7   Texas.

8           Q.    All right. How about C, was that also from  
9   Texas?

10          A.    There again, I'd have to look at the  
11   document. I think that one came from Texas, but I'm  
12   not sure without looking at it.

13          Q.    Okay. Paragraph D, did that also come from  
14   Texas?

15          A.    I'd have to look at the document.

16          Q.    Do you have those documents here in this  
17   room?

18          A.    I think they're part of the files of  
19   documents.

20          Q.    Can we ask Jane to get us those documents?  
21   So, Doctor, why don't you -- I would like to know where  
22   you got these documents from and --

23          A.    Right.

24                THE WITNESS: Jane, they should be part of  
25   the red book:

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1 Q. Does the red book contain all the documents  
2 that are listed in the affidavit?

3 A. That's where I filed a number of them.

4 MR. LERMAN: Jane, let me suggest that you  
5 bring the red book over here in its entirety and we'll  
6 go through the whole thing.

7 Q. We have not marked the red book as an exhibit  
8 and I'm not proposing that we do that, but does the red  
9 book contain a copy of the -- is it your working copy  
10 of the documents that are listed in your affidavit?

11 A. Generally, yes.

12 Q. Okay. With respect to the document that's on  
13 page 6, paragraph A --

14 A. Right, now, in my copy of the document  
15 numbered, they're numbered here. Just let me -- okay,  
16 6 -- I just have a numbering system (indicating).

17 Q. You're using a working copy of your affidavit  
18 that shows the number of the document for your  
19 notebook; is that right?

20 A. That's true. This working copy has different  
21 pages, sequencing of typing, so give me a second.  
22 Okay, that's number 1 here.

23 Q. What's the source of that document?

24 A. This document I'm pretty sure was provided by  
25 the state as part of the document --

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1 Q. Part of what you've called the disclosure?

2 A. Part of the documentations that they received  
3 from the tobacco industry.

4 Q. Okay. B was the deadwood memo. You say that  
5 you got that from the state. C, memorandum, Peeples to  
6 Wells.

7 A. That too came from --

8 Q. Came from the state?

9 A. It came from that source.

10 Q. D?

11 A. That came from that source also.

12 Q. Came from the state; is that correct?

13 A. That's true.

14 Q. E?

15 A. That too came from the state.

16 Q. F?

17 A. That came from the state.

18 Q. Looking now on page 7, paragraph A, the  
19 document referenced there, first paragraph A at the  
20 top?

21 A. No, that came from the state.

22 Q. Looking at the bottom of the page, the  
23 paragraph A at the bottom.

24 A. That too came from the state.

25 Q. And the document referenced in paragraph B,

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1 carrying over to the top of page --

2 A. I believe that came from the state also.

3 Q. Page 9, paragraph A at the top of the page?

4 A. Page 9?

5 Q. Yes, of your affidavit, page 9.

6 A. Oh, sorry, A at the top, that's the '72  
7 document. I believe this document came from the state  
8 also.

9 Q. Paragraph B?

10 A. I believe this document came from the state.

11 Q. Paragraph C?

12 A. This document was from that source also.

13 Q. The State of Texas; is that right?

14 A. Yes.

15 Q. And then the second paragraph B, the  
16 transcript from the MacNeil/Lehrer Newshour?

17 A. Yes, I think I got that from Texarkana.

18 Q. When you say you got it from Texarkana, what  
19 do you mean?

20 A. I got it from the state.

21 Q. Okay. Page 10, paragraph A, what is the  
22 source of that document?

23 A. That document also came from the repository  
24 down in Texarkana.

25 Q. Okay. Paragraph B?

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1           A.    I believe that document came from the  
2 repository in Texas.

3           Q.    Why do you say it came from the repository in  
4 Texas?

5           A.    If you go to the -- if you go to Texarkana  
6 and go to the state's site --

7           Q.    That's where they keep their documents; is  
8 that right?

9           A.    That's where they keep their documents.

10          Q.    Now, did you go to the repository and  
11 retrieve those documents based on your own independent  
12 searching?

13          A.    Some documents I was sent, some documents I  
14 retrieved. I didn't keep a record of which documents.

15          Q.    So you don't know as we've gone through here  
16 whether any of these documents you personally  
17 retrieved?

18          A.    No, because I've sorted them many times since  
19 then.

20          Q.    When did you personally retrieve them,  
21 Doctor?

22          A.    I was down in Texarkana --

23          Q.    Two weeks ago?

24          A.    -- about approximately a week ago or 10 days  
25 ago. Again, whatever.

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1 Q. Okay. These documents are cited in an  
2 affidavit that was written on February 8th.

3 A. Right.

4 Q. So that's before you went to the Texarkana  
5 repository.

6 A. Okay, so these particular documents, then --

7 Q. Were all sent to you by the state?

8 A. -- must have been provided by the state.

9 These were not in the documents that I retrieved  
10 myself.

11 Q. Are there any documents listed in your  
12 affidavit that were not sent to you by the State of  
13 Texas?

14 A. Each of the documents that are listed here I  
15 believe were in the category of those sent to me by the  
16 State of Texas. Now, the basis for my analysis went  
17 beyond 32 documents.

18 Q. That's what I'm asking about, is the 32  
19 documents in your affidavit.

20 MR. LERMAN: I'm going to ask that we take a  
21 little break. I'm going to see if we're done.

22 MR. HOHN: All right.

23 THE VIDEOGRAPHER: The time is 8:24, going  
24 off the record.

25 (Brief recess.)

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1 THE VIDEOGRAPHER: Back on the record, the  
2 time is 8:28 p.m.

3 MR. LERMAN: I've got no further questions.  
4

5 E X A M I N A T I O N

6 BY MR. HOHN:

7 Q. Dr. Carter, my name is Ed Hohn. I'm with the  
8 Nix law firm and you understand that I represent the  
9 State of Texas, do you not?

10 A. I do.

11 Q. In a lawsuit that's been filed down in  
12 Texarkana, Texas against the tobacco industry on behalf  
13 of the State of Texas; do you understand that?

14 A. I do.

15 Q. In response to some questions by the tobacco  
16 lawyer concerning information, all information  
17 surrounding certain documents, would you want to at  
18 least have the ability to analyze all information  
19 surrounding information operations as to  
20 Burson-Marsteller?

21 A. I think that would provide added insights,  
22 yes.

23 Q. Including documents surrounding perception  
24 management or the equivalent term of information  
25 operations in their literature?



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1 A. Yes.

2 Q. Would you want to look at or at least have  
3 the opportunity to look at the contract between Philip  
4 Morris and Burson-Marsteller?

5 A. Yes.

6 Q. Concerning the universe of documents that we  
7 talked about earlier or that you talked about earlier  
8 in response to questions that were propagated to you,  
9 what about the universe of documents would you like to  
10 at least have the opportunity to review or at least  
11 look at?

12 A. The interesting part of this analysis was  
13 that I was looking -- I was able to look at the  
14 documentation that was either open -- available in open  
15 source or provided to me. There's -- because of the  
16 nature of this information operation campaign, it is  
17 apparent that there's documents that have not been  
18 disclosed, that are not available. Through various  
19 information operations techniques, they've kept them  
20 away from scrutiny and study. Of course I'd like to  
21 look at them and I would form my basis -- I'd form my  
22 opinion based upon a broadened body of evidence if it  
23 became available to me.

24 Q. If documents that were destroyed through  
25 whatever source could be recreated or reconstructed or

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1 exist in another form somewhere else, would you like to  
2 at least have the opportunity to look at those  
3 documents?

4 A. Yes.

5 Q. And of the documents or information that were  
6 moved or allegedly moved overseas, if those existed in  
7 another form or existed overseas, would you like to at  
8 least have the opportunity to review those from an  
9 information operations perspective?

10 A. Yes.

11 Q. How many Medicaid smokers have died from  
12 smoking-related illness?

13 A. Say the question again.

14 Q. Sure. What's the number of Medicaid  
15 recipients who have died because of smoking-related  
16 illnesses?

17 A. All of them have died -- I'm not following  
18 your line of questioning.

19 Q. Let me try to rephrase it. I know it's  
20 late.

21 A. Right.

22 Q. Is there any way that you can go back and  
23 reconstruct any type of information surrounding dead  
24 Medicaid recipients in Texas, whether they died from  
25 cigarette smoking or not?

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1 A. That would be difficult for me to do.

2 Q. It would be difficult for anybody to do?

3 A. It would be difficult for -- if you're  
4 including dead Medicaid participants in your population  
5 of Medicaid participants, then that would be difficult  
6 to do.

7 Q. You cited an example in questions earlier  
8 about the Somali incident and the warlord renegade that  
9 was down there. Do you recall that line of  
10 questioning?

11 A. Yes.

12 Q. How many people did that affect across the  
13 United States of America when they were dragging those  
14 United States troops all over CNN TV?

15 A. A huge part of the population. I think that  
16 was a turning point in our resolve and our will, our  
17 determination to stay there. That was the reason I  
18 brought that out as an example.

19 Q. As for a specific number, can you give me a  
20 specific number?

21 A. No.

22 Q. Did it work?

23 A. Oh, absolutely, we were gone in a matter of  
24 months.

25 Q. Do you have to talk to everybody in the

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1 United States to come to the conclusion based upon  
2 information operations that that act, that single act  
3 worked?

4 A. No.

5 Q. Do you know how many people have passed away  
6 since that Adid warlord conducted that information  
7 operation on the United States?

8 A. No.

9 Q. Does CNN usually have knowledge of where our  
10 troops are in any given military operation?

11 A. We have a pattern of disclosure to the  
12 media. We have press pools escorting the media out  
13 onto the battlefield and we expose them to a great deal  
14 of information on what we're doing.

15 Q. Why do you have to disclose or do you have to  
16 disclose information surrounding that?

17 A. Well, first of all, the press is very  
18 determined that they're going to find out about a lot  
19 of your operations. We find that public support for  
20 what we do is essential.

21 Q. What gives them -- I'm sorry.

22 A. Well, I was finished.

23 Q. What gives them the right to try to pursue  
24 that information?

25 A. Well, there's an expectation on the part of

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1     their audience, the American population, that they have  
2     the right to know about what the country's soldiers are  
3     doing in these far off places, and they go and report  
4     on that.

5             Q.     Which one of 10 amendments does that deal  
6     with?

7             A.     Free and open press.

8             MR. HOHN: I pass the witness.

9             MR. LERMAN: I've got nothing.

10            MR. HOHN: Okay. Thank you very much.

11            MR. LERMAN: Nothing further.

12            THE VIDEOGRAPHER: This concludes the  
13     deposition of Dr. Ronald W. Carter. This is tape 5 of  
14     5. The time is 8:37 p.m. The original videotapes will  
15     be retained until further notice by ProVideo  
16     Productions in Seattle, Washington. Here ends the  
17     deposition.

18                    (Deposition concluded at 8:38 p.m.)  
19  
20  
21  
22  
23  
24  
25

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## SIGNATURE

I declare under penalty of perjury under the laws of the State of Washington that I have read my within deposition, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the CHANGE SHEET flyleaf page hereof. In.....WA on the.....day of....., 1997.

.....  
RONALD W. CARTER

MVW

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## C E R T I F I C A T E

STATE OF WASHINGTON

) ss.

COUNTY OF KING )

I, the undersigned Registered Merit Reporter and an officer of the Court under my commission as a Notary Public for the State of Washington, hereby certify that the foregoing deposition upon oral examination of RONALD W. CARTER was taken before me on September 27, 1997, and transcribed under my direction;

That the witness was duly sworn by me to testify truthfully; that the transcript of the deposition is a full, true, and correct transcript to the best of my ability; that I am neither attorney for, nor a relative or employee of, any of the parties to the action or any attorney or counsel employed by the parties hereto, nor financially interested in its outcome. IN WITNESS WHEREOF, I have hereunto set my hand and seal this... 28 Sep 1997.

.....  
Margaret Walkky, Notary Public in the  
State of Washington, residing at Seattle.

Commission expires 9-18-97, CSR WALKKMOV498MQ